***People v. Patrick C. Hyde*. 15PDJ103. July 6, 2016.**

A hearing board suspended Patrick C. Hyde (attorney registration number 14633) from the practice of law for one year and one day, with three months to be served and the remainder to be stayed upon successful completion of a two-year period of probation. The suspension takes effect March 27, 2017.

Hyde represented a Guinean client who wished to secure legal immigrant status in the United States. During the representation, Hyde failed to adequately explain to the client important legal matters and neglected to set forth the basis or rate of his fees in writing. He then made a misrepresentation by omission when he neglected to tell his client that she had paid him $500.00 more than the balance reflected in his own accounting ledger.

Through this conduct, Hyde violated Colo. RPC 1.4(b) (a lawyer shall explain a matter so as to permit the client to make informed decisions regarding the representation); Colo. RPC 1.5(b) (a lawyer shall inform a client in writing about the lawyer's fees and expenses within a reasonable time after being retained, if the lawyer has not regularly represented the client); and Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The Colorado Supreme Court affirmed the Hearing Board's opinion on February 2, 2017.

Please see the full opinion below.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** PATRICK C. HYDE	Case Number: **15PDJ103**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)	

While representing a client in an immigration case, Patrick C. Hyde ("Respondent") failed to adequately explain important legal matters to the client and failed to set forth the basis or rate of his fees in writing. He then made a misrepresentation by omission when he neglected to tell his client that she had paid him more than the balance reflected in his own accounting ledger. Respondent's misconduct warrants a suspension for one year and one day, with three months to be served and the remainder stayed upon successful completion of a two-year period of probation.

I. PROCEDURAL HISTORY

On November 19, 2015, Jacob M. Vos, Office of Attorney Regulation Counsel ("the People"), filed a complaint against Respondent, alleging he violated Colo. RPC 1.4(a)(1), 1.4(a)(4), 1.4(b), 1.5(a), 1.5(b), 1.16(d), and 8.4(c). Respondent answered the complaint on January 19, 2016, denying any wrongdoing.[1] Presiding Disciplinary Judge William R. Lucero ("the PDJ") set a disciplinary hearing for May 12, 2016.

At the May hearing, Vos represented the People and Respondent appeared pro se before a Hearing Board comprising Steven Meyrich and Andrew A. Mueller, members of the bar, and the PDJ. The Hearing Board received testimony from Bryon Large, Illiasso Diallo, and Respondent, and it considered the stipulated facts and stipulated exhibits S1-S31.

[1] Respondent received an extension of time to file his answer.

II. FINDINGS OF FACT AND RULE VIOLATIONS

Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on May 29, 1985, under attorney registration number 14633. He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[2]

Findings of Fact[3]

The Hearing Board first provides a chronological account of the representation underlying this disciplinary case, including the differing factual assertions made by Respondent and his client. Because those assertions diverge so markedly, and because resolution of the inconsistencies depends on a full understanding of the factual context, the Hearing Board sets forth its findings as to the disputed facts after the conclusion of the chronological account.

Respondent is a Denver immigration attorney. He developed an interest in other languages and cultures when he was stationed in Germany during his military service. After receiving degrees in three languages, he attended law school at the University of Denver, where he focused on international law, international business law, and immigration law. After earning his J.D., he opened his own firm, initially representing his father's construction business. His father soon passed away, and Respondent began representing immigration clients. Aside from a hiatus during which he taught government contract law at the Lowry Air Force Base, he has focused his practice on immigration matters.

This disciplinary case arises from Respondent's representation of Illiasso Diallo. Diallo came to the United States from Guinea in April 2001, when she was fourteen years old.[4] She attended three years of high school in Colorado but dropped out before having a baby in 2005.[5]

On August 12, 2011, Diallo met with Respondent at his office, along with her then-boyfriend, seeking advice about how to secure legal immigrant status.[6] She had overstayed the visitor visa on which she initially entered the United States, but no removal proceedings were pending against her. At the time, she was taking classes to earn her GED. According to Diallo, she wanted Respondent's assistance in securing legal status so she could obtain

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

[3] Where not otherwise indicated, these facts are drawn from testimony provided at the hearing. The Hearing Board notes that Respondent discussed a number of alleged facts during his opening and closing statements that were not the subject of any testimony or evidence. We do not consider any of those statements in reaching our factual findings.

[4] Stip. Facts ¶¶ 2-3. Diallo's native language is Fula, and she also learned French and English. Ex. S7. She testified that she now feels most comfortable communicating in English.

[5] Ex. S16 at 1. Diallo completed just two years of school in Guinea, when she was eight to ten years old. Ex. S16 at 1.

[6] *See* Stip. Facts ¶ 4.

financial aid to attend community college. Respondent, however, attested that Diallo did not mention her desire for financial aid until later in the representation.

According to Respondent, upon learning that Diallo had been subject to female genital mutilation ("FGM"), he identified three primary avenues by which she could secure legal status. First was asylum. But Diallo was subject to a one-year bar, which generally requires an immigrant to apply for asylum within one year of arriving in the United States, or within one year of turning eighteen if the immigrant arrived in the United States as a minor. According to Respondent, at the time he initially met with her in 2011, Diallo had a colorable though arcane argument that the one-year bar should not apply because she had not engaged in dilatory tactics; however, a Tenth Circuit decision issued in 2012 essentially foreclosed that argument, short of seeking U.S. Supreme Court review. The second possibility, Respondent said, was to obtain protection under the U.N. Convention Against Torture. But based on facts specific to FGM in Guinea, Respondent concluded that Diallo's case would be weak. The third—and strongest—option that Respondent identified was seeking relief in the form of withholding of removal.[7]

At the disciplinary hearing, immigration attorney Bryon Large explained that withholding of removal provides "asylum-like benefits." To obtain this relief, the immigrant must show it is more likely than not that he or she would be persecuted upon return to his or her country of origin. After receiving withholding of removal, an immigrant cannot be forcibly returned to his or her country of origin. An immigrant who has obtained this relief is eligible for a work permit in the United States.

Respondent testified that he discussed all three avenues mentioned above with Diallo at their initial meeting. He said he told her that the proper course of action would be to apply for all three forms of relief on an I-589 form, and the immigration judge would then decide what relief, if any, to grant. According to Respondent, he explained that Diallo would claim asylum and "asylum-related relief"—common parlance for withholding of removal and Convention Against Torture protections.

Diallo, by contrast, stated that Respondent never mentioned the term "withholding of removal." She said she wanted to pursue asylum so that she could obtain lawful permanent resident status (also referred to as a "green card"), and she believed throughout the representation that Respondent was working to obtain asylum for her.

Respondent testified that he informed Diallo at their initial meeting in August 2011 that his rate for consultations was $200.00 per hour, and that they entered into an oral agreement as to the specific fee for each part of the representation. It appears that

[7] It appears that Diallo immediately rejected two other possibilities for obtaining legal status that Respondent mentioned: marrying a U.S. citizen or securing legal status through her U.S.-citizen daughter when her daughter turned twenty-one. Yet another possibility was to seek administrative closure of Diallo's case. Respondent and Diallo ultimately did not pursue this option, which relies on the exercise of prosecutorial discretion and does not result in a final disposition of a case. *See* Ex. S14.

Respondent principally contemplated charging Diallo $1,000.00 for filing the I-589, $500.00 for appearing at the U.S. Citizenship and Immigration Services ("USCIS") interview, $500.00 for attending a master calendar hearing (a scheduling hearing) in immigration court, and $2,000.00 for representing her at an individual hearing (the hearing on the merits). Respondent did not give Diallo a written fee agreement at their first meeting or, indeed, at any stage of the representation.[8] Instead, he issued Diallo payment receipts for specified services when she paid him incrementally, and he recorded the legal services, payments, and debts on a handwritten ledger.[9] At their forty-minute initial consultation, Respondent gave Diallo a receipt for her $100.00 payment reading simply: "Consultation no representation at this time."[10]

Diallo's understanding of the fee arrangement was that Respondent would charge $100.00 for the initial consultation, $500.00 for each court appearance, and $1,000.00 to "write her story," i.e., to draft a written statement explaining the basis for her asylum claim as part of the I-589. Diallo then decided to "write her own story," which she thought meant she would not be charged $1,000.00. When Respondent later demanded $1,000.00 to submit her application, Diallo was perplexed but agreed to pay. In August 2011, she paid $500.00 and Respondent issued her a receipt with the notation: "fill out + send to USCIS asylum application I-589 + appear at agency interview."[11] She paid another $500.00 the next month, and Respondent issued a receipt for "pmt on account asylum application fill out and file."[12]

In October 2011, Respondent prepared and filed Diallo's signed "I-589 Application for Asylum and for Withholding of Removal."[13] This included an entry of appearance, the completed I-589 form, Diallo's written statement, copies of relevant identification documents, and information about the practice of FGM in Guinea.[14] In addition, the application contained two brief reports from doctors whom Diallo visited at Respondent's direction in October 2011; the reports confirmed that she had been circumcised.[15]

In March 2012, Respondent and Diallo attended the USCIS interview in Centennial. It appears that Diallo paid Respondent $500.00 to appear at the interview, but he did not give her a receipt.[16] After the interview, USCIS issued a "referral notice" indicating that Diallo had not filed her asylum application within the requisite one-year timeframe and that her application was being referred to an immigration judge.[17] Respondent and Diallo attended a master calendar hearing in immigration court on June 21, 2012, at which time Diallo's

[8] Stip. Facts ¶ 5.
[9] Stip. Facts ¶ 6; *see* Ex. S3.
[10] Exs. S2 & S4.
[11] Ex. S5.
[12] Ex. S6.
[13] Ex. S7.
[14] Ex. S7.
[15] Ex. S7.
[16] *See* Answer ¶ 51 (indicating that Diallo paid $500.00 on the day of the interview but Respondent did not have his receipt book with him at the time).
[17] Ex. S12.

individual hearing was scheduled for October 22, 2013.[18] Diallo paid Respondent $500.00 the day before the master calendar hearing and received a receipt for "representation before immigration judge for asylum claim (MCH [illegible] IH)."[19] Respondent's accounting ledger shows that as of June 20, 2012, Diallo's outstanding balance was $2,000.00 and that she made no more payments until March 29, 2014.[20]

Diallo arrived about half an hour late for her individual hearing on October 22, 2013. While waiting for her, Respondent spoke with counsel for USCIS, who agreed to stipulate to withholding of removal if Diallo withdrew her application for asylum.[21] When Diallo reported to the courtroom, Respondent met with her in the hallway. He recalls that they spoke for at least several minutes and that he advised her about the offer of withholding of removal—a form of relief, he says, they had discussed extensively on prior occasions. Diallo, by contrast, recalls that the meeting lasted "not even twenty seconds." She testified that Respondent told her only that she was going to "win her case" and that she should respond "yes" if the judge asked her anything. According to Diallo, she took Respondent's statements to mean that she was going to obtain asylum.

When the court convened, the judge asked Diallo if her application was true and correct, and she responded "yes."[22] The attorneys outlined their agreement to withholding of removal, and Respondent stated that Diallo was withdrawing her request for asylum.[23] As a legal formality, the judge ordered Diallo removed to Guinea and then entered an order withholding that removal.[24] The judge issued a minute order memorializing her oral orders.[25]

At the conclusion of the hearing, Diallo said, she believed she had obtained asylum. According to Diallo, Respondent told her that she needed to pay his outstanding fees in order to get the court's order. Respondent, meanwhile, recalls that Diallo was not initially interested in obtaining the order—he said she only made clear her desire for a copy of the order when she later came to believe that she needed it to obtain financial aid. He said that immediately after the hearing, he suggested she come to his office so he could explain the outcome of the hearing and give her the order after making a copy for his own file, but she declined to come. Respondent said he never insisted that she pay him as a precondition to giving her the order. In fact, he said that he figured Diallo's case was probably an "informal pro bono case."

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[18] Ex. S21.
[19] Ex. S13.
[20] Ex. S3.
[21] Stip. Facts ¶¶ 11, 13.
[22] Ex. S21.
[23] Ex. S21.
[24] Ex. S21. The judge formally concluded that Diallo had been subjected to FGM. Ex. S21. At the judge's direction, the parties agreed to deem withdrawn Diallo's application under the Convention Against Torture and to waive any right to appeal. Ex. S21.
[25] Ex. S22.

Diallo called Respondent several times between October 2013 and March 2014 to discuss her case.[26] According to Respondent, two of the conversations lasted over forty minutes, two lasted over thirty minutes, and two lasted ten minutes. Respondent said that Diallo did not request a copy of the court's order during any of these calls.

In March 2014, Diallo testified, she received a tax refund and called Respondent to say she could pay him the $500.00 he had demanded as a precondition to giving her the court's order. According to Diallo, he responded that she owed him $2,500.00, which surprised her because she thought he charged just $500.00 per court appearance. She decided she would pay him the $2,500.00, thinking that she had "struggle[d] so much in this country" and "at least this is the end of it." Diallo testified that she went to Respondent's office on March 29, 2014, with her niece and $2,500.00 in cash, and he instructed her to give him the money before he handed over the court's order.

Respondent's recollection is quite different. He said that Diallo called to tell him she had the $2,500.00 she owed him, and he accepted that payment without referring to his own accounting ledger. Only later did he refer to the ledger, which showed that she owed him only $2,000.00. He did not refund the additional $500.00 because he and Diallo had spoken by phone many times since the individual hearing, and he concluded that she must have decided to pay him for that time. Respondent issued a receipt to Diallo for her $2,500.00 payment; it is difficult to decipher, but he testified that it reads "IH [individual hearing] asylum."[27]

Respondent's accounting ledger, as noted above, shows that Diallo had owed him $2,000.00 since June 2012.[28] Below an entry showing that Diallo paid $2,000.00 on March 29, 2014, other entries appear bearing the same date and indicating that Diallo owed an additional $500.00 for "ch TCs + consults" and indicating that Diallo had paid that balance.[29] As of March 29, 2014, Diallo had paid a total of $4,630.00.[30]

Also at their meeting on March 29, 2014, Diallo told Respondent that she wanted him to set up an appointment with USCIS so she could obtain an I-94 form.[31] Respondent then scheduled an "InfoPass" appointment with USCIS.[32] According to Diallo, Respondent told her that she needed an I-94 to get her green card, and she understood that she needed a green card in order to attend school. Respondent testified at the disciplinary hearing that Diallo herself expressed the desire for an I-94. He did not believe that she in fact needed the form, and he did not know whether she could obtain an I-94—he said he would have had to

[26] Stip. Facts ¶ 15.
[27] Ex. S17.
[28] Ex. S3.
[29] Ex. S3. As with most of Respondent's handwritten notes, this writing is hard to make out. However, the parties stipulated that this receipt was for "telephone calls and consults." Stip. Facts ¶ 8.
[30] Stip. Facts ¶ 7.
[31] Stip. Facts ¶ 19. According to Large, an I-94 form is a noncitizen's record of arrivals to and departures from the United States, and the form can function as temporary proof of legal status.
[32] Stip. Facts ¶ 20.

research whether she was eligible. He did not advise her at their March 2014 meeting that she was unlikely to obtain an I-94. Large, meanwhile, testified that he has "never seen" USCIS issue an I-94 to a person who has been granted withholding of removal, though he is aware of no law that would prohibit issuance of an I-94 under such circumstances.

Diallo attended her InfoPass appointment without Respondent on March 31, 2014.[33] When she showed the USCIS agent a copy of the immigration court's order, he told her that she had been granted withholding of removal, she could not receive an I-94, and she did not have a green card.[34] Diallo, distraught, called Respondent. According to Diallo, he assured her that she would still get her green card, that she would still be able to attend the Community College of Aurora ("CCA") as she wished, and that she should talk to the financial aid office at CCA.

Diallo then visited CCA's financial aid office, where she was informed that she could not obtain financial aid unless she gained permanent resident status. She again called Respondent, who argued to the financial aid officer that Diallo should be eligible for aid, to no avail. Respondent maintained at the disciplinary hearing that CCA erred in requiring proof of an I-94 because under 8 U.S.C. sections 1611 and 1641 Diallo is eligible for all federal benefits, including postsecondary benefits.[35]

Diallo has not attended CCA since the events described above. She said she cannot afford the tuition without financial aid.[36] Diallo filed suit against Respondent in Denver small claims court in July 2014, claiming $2,500.00.[37] She explained to the Hearing Board that she did so because Respondent failed to pursue her goal of obtaining asylum. In her filing, she stated the following as the basis for her claim:

> Patrick C Hyde has been my lawyer since 2012 we agree that each time he goes to court with me and reviewing all my document I will pay him $500 After immigration judge gave him the court ruling Patrick and I set an appt for immigration then he ask me to pay him $2500 because he set the apt and I went to the immigration I was advise that the status I came for it was not my case + then went to Patrick try to found what [illegible] he told me he is not my lawyer anymore[38]

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[33] Stip. Facts ¶ 21.

[34] Stip. Facts ¶¶ 21-22.

[35] 8 U.S.C. section 1641(b) indicates that a "'qualified alien' . . . who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is [inter alia] an alien whose deportation is being withheld . . . ." In turn, 8 U.S.C. section 1611(c)(1)(B) defines "Federal public benefit" to include any postsecondary education benefit.

[36] According to Respondent, Diallo is now married and is eligible for lawful permanent resident status on that basis.

[37] Ex. S24.

[38] Ex. S24. Diallo testified in small claims court that her cousin wrote this statement under Diallo's directions. Ex. S26 at 5.

Respondent filed a counterclaim, asserting: "I promised the service to represent her at her individual asylum hearing at the charitable rate and she paid me $2500. The quantum meruit rate is $5,000 for this service [illegible]."[39] The small claims court magistrate dismissed the case on the grounds that a claim of attorney misconduct requires a certificate of review or resolution through the disciplinary process.[40]

As noted at the outset of the factual findings, Respondent's and Diallo's testimony conflicts on numerous points. The Hearing Board finds that the truth likely lies somewhere in between their two accounts. This is for two reasons. First, based on communication challenges, we believe Diallo and Respondent in many instances simply did not understand one another. Diallo has significant difficulty expressing herself and comprehending oral statements, as evidenced by her responses to questions at the disciplinary hearing and her failure to understand questions posed by the magistrate in small claims court.[41] Diallo also did not appear to grasp a number of elementary factual matters at the disciplinary hearing, and we strongly suspect she may be confused about factual aspects of Respondent's representation. For his part, Respondent exhibited a particularly rushed manner of speaking at the disciplinary hearing that could have further confounded Diallo.

Second, both Diallo and Respondent have somewhat diminished credibility. Diallo appears to be strongly motivated to show that Respondent was in the wrong, perhaps because she still hopes to receive a refund or perhaps because of her belief that he "disgrace[d]" her. In addition, she put forth numerous nonsensical or otherwise incredible assertions about statements Respondent made to her. For instance, she insisted that Respondent repeatedly told her she was eligible for a "green card," including that she could obtain a green card at her InfoPass appointment, but we do not believe he would have made such blatantly incorrect statements about a legal issue. Nor can we believe that Respondent told her that "if you don't have this paper [the copy of the immigration court's order], you know, your life is nothing in this country."[42] Diallo's recollections also were plainly incorrect on various issues. For instance, she firmly insisted that her then-boyfriend provided her no help other than emotional support in her immigration case, but in fact he translated her written statement from French into English.[43]

On the other side of the ledger, Respondent of course has an incentive to present a sympathetic account because he hopes to avoid discipline. Moreover, his resistance to admitting that he could have in any way better handled this representation was

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[39] Ex. S24. Respondent testified before the Hearing Board that he included the quantum meruit claim so that the small claims magistrate could rely on this theory to assign a value to his legal services if the magistrate was unable to determine the value of the contract based on the parties' testimony.

[40] Ex. S24. The magistrate then submitted a grievance to the People. Ex. S25.

[41] *See* Ex. S26.

[42] Ex. S25 at 16.

[43] Ex. S7, "Certificate of Translation." As another example, she testified that she arrived in the United States when she was eleven years old, but in fact she arrived at age fourteen. Ex. S7. And she incorrectly remembered the timing of her doctor's appointments, insisting that they took place after her March 2012 USCIS interview, though the appointments actually occurred in October 2011. Ex. S7.

disingenuous and troubling. He also made some assertions that were inconsistent with the clear evidence presented, such as incorrect statements about what took place at Diallo's individual hearing.

We resolve the critical factual inconsistencies as follows: We find that Respondent told Diallo at the outset that she might be eligible for "asylum" or "asylum-related relief," including "withholding of removal," but he did not emphasize the term "withholding of removal," perhaps because he adjudged that this relief would suit her needs and that she was more open to considering it if phrased as a form of "asylum" or "asylum-related relief."[44] We find that Respondent explained the legal distinctions to Diallo on several occasions, but she did not fully understand and he did not explain sufficiently for her to comprehend. This is particularly true regarding the interchange that took place between Respondent and Diallo just before Diallo's individual hearing. Diallo believed that she obtained asylum at the individual hearing, and she was taken aback to learn otherwise at the InfoPass appointment. After the individual hearing, we find, Respondent suggested that Diallo visit his office so that she could pay him, he could give her the immigration court's order, and they could further discuss her case. He may not have meant to issue an ultimatum per se, but he did encourage her to pay him and she interpreted his commentary to mean that she needed to pay him before he would give her the order. Diallo, for her part, did not ask Respondent for the immigration court's order until the spring following the individual hearing, perhaps because she was then applying for financial aid. Finally, as to whether Respondent requested that Diallo pay him $2,500.00 in March 2014, as she asserts, or whether Diallo herself determined that $2,500.00 was her outstanding balance, as Respondent asserts, we find that the evidence is in equipoise and that communication difficulties may have caused a misunderstanding on this issue.

Rule Violations

Communication Claims – Colo. RPC 1.4(a)(1), 1.4(a)(4), and 1.4(b)

The People first charge that Respondent violated Colo. RPC 1.4(a)(1), which requires a lawyer to promptly inform the client of any decision or circumstance as to which the client's informed consent is required under the Rules of Professional Conduct. Respondent transgressed this rule, say the People, when he failed to inform Diallo of the consequences of withdrawing her asylum application and agreeing to withholding of removal. In defense, Respondent asserts that he repeatedly explained withholding of removal to Diallo and that she understood.

The Hearing Board concludes that the conduct complained of does not square with the elements of Colo. RPC 1.4(a)(1) because Diallo's informed consent was not called for. The Rules of Professional Conduct require an attorney to obtain a client's informed consent only in specified circumstances, including when a lawyer seeks to limit the scope or objectives of

[44] Using the term "asylum-related relief" does not appear to have been a misstatement or misrepresentation. Large testified that withholding of removal confers "asylum-like benefits."

a representation (Colo. RPC 1.2(c)), when a lawyer seeks to reveal information relating to the representation (Colo. RPC 1.6(a)), and in the circumstances addressed in Colo. RPC 1.7, 1.8, 1.11, 1.12, 1.18, and 2.3.[45] In each of these instances, a client's informed consent is required as to a *lawyer's* course of action that the *lawyer* proposes to undertake. Here, the decision whether to accept the offer of withholding of removal was a "decision whether to settle a matter" entrusted to Diallo under Colo. RPC 1.2(a), and the concept of informed consent is inapposite. Colo. RPC 1.4(a)(1) thus is not implicated.[46]

The People further allege that by failing to give Diallo the immigration court's order Respondent violated Colo. RPC 1.4(a)(4), which requires a lawyer to promptly comply with reasonable requests for information. This is a close question. As discussed above, we think it is most likely that Respondent encouraged Diallo to pay him and said he would give her the court's order if she came to his office. But she elected not to visit his office for several months, until she was preparing to apply for financial aid and came to believe that she needed the court's order in hand. Although Respondent probably could have more clearly explained to Diallo that she was entitled to the order, we do not find that his conduct on this score rises to the level of a rule violation. We note, however, that a better practice would have been for Respondent to mail a copy of the order to Diallo along with a bill for services rendered, which would have averted the parties' misunderstandings.

The People's last communication-related claim is that Respondent violated 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 Respondent violated this rule in three separate regards: by failing to sufficiently explain withholding of removal; by failing to tell Diallo that the InfoPass appointment would be fruitless because she was unlikely to obtain an I-94 form; and by failing to reasonably explain his fees.

The Hearing Board concludes that while Respondent likely attempted to explain withholding of removal on multiple occasions, he never explained the concept sufficiently for Diallo to fully understand it. Instead, we credit Diallo's testimony that she believed she had obtained asylum at her individual hearing. Respondent's efforts thus fell short. When communication difficulties arise between a lawyer and a client, the onus is on the lawyer to ensure the client understands critical aspects of the representation.[47] Here, Respondent's

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[45] *See also* Colo. RPC 1.0 cmt. 6 (indicating that certain Rules of Professional Conduct require a lawyer to obtain informed consent "before accepting or continuing representation or pursuing a course of conduct").

[46] *See* ABA *Annotated Model Rules of Professional Conduct* 55 (7th ed.). The Hearing Board notes that, as discussed below, Respondent's failure to sufficiently inform Diallo about withholding of removal did violate Colo. RPC 1.4(b). As such, our decision not to find a violation of Colo. RPC 1.4(a)(1) does not meaningfully affect the outcome in this matter. Disciplinary sanctions are imposed based upon the nature of the misconduct at issue, not the number of rule violations. A finding of a Colo. RPC 1.4(a)(1) violation would not change how we weigh the aggravating factor of multiple rule violations.

[47] By Respondent's admission, this was not a situation involving diminished capacity, where it might have been impracticable to fully inform the client. *See* Colo. RPC 1.4 cmt. 6. Respondent himself testified that Diallo was simply "not intellectually disciplined."

inadequate communication deprived Diallo of "sufficient information to participate intelligently" in deciding whether to accept withholding of removal.[48]

As to the InfoPass appointment, Respondent concedes that he did not tell Diallo she was unlikely to obtain an I-94, and we find that he violated his duty in this regard. Respondent states in his answer that "[s]he did not ask me whether I thought she was entitled to an I-94 at that time [when he made the InfoPass appointment]." But Respondent had a duty to affirmatively explain to his client that the course of action she sought his help in pursuing was likely to be a waste of time and effort. Indeed, Large's testimony suggests that it should have been fairly clear to Respondent that Diallo probably would not leave the InfoPass appointment with an I-94 in hand. Respondent thus violated Colo. RPC 1.4(b) on this score, too.

Finally, although we conclude below that Respondent violated Colo. RPC 1.5(b) by failing to adequately explain his fees in writing, we do not find that this conduct contravened Colo. RPC 1.4(b). Comment 7A to Colo. RPC 1.4 states that "[i]nformation provided to the client under Rule 1.4*(a)* should include information concerning fees charged . . . ."[49] For this reason, and because we find it unnecessary to premise two rule violations on the same conduct, we do not find a violation of Colo. RPC 1.4(b) on the third basis alleged by the People.

Fee Claims – Colo. RPC 1.5(a) and 1.5(b)

In evaluating the People's claims that Respondent violated Colo. RPC 1.5, we first consider the People's charge that Respondent never explained in writing the basis for his fees or the changes to his fees, as required by Colo. RPC 1.5(b). That rule states that a lawyer shall inform a client in writing about the basis or rate of the lawyer's fee and expenses within a reasonable time after being retained, if the lawyer has not regularly represented the client.[50] Respondent urges the Hearing Board to find that the receipts he gave Diallo satisfied Colo. RPC 1.5(b). He asserts that the receipts provided the same information as a written fee agreement: they explained what services he provided and how much they cost.

Comment 2 to Colo. RPC 1.5 states that while "it is not necessary to recite all the factors that underlie the basis of the fee" in a written communication, those factors "directly involved in [the fee's] computation" should be set forth in writing. The comment continues: "It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, to identify the factors that may be take[n] into

[48] Colo. RPC 1.4 cmt. 5.
[49] Emphasis added.
[50] Colo. RPC 1.5(b).

account in finally fixing the fee, or to furnish the client with a simple memorandum or the lawyer's customary fee schedule."[51]

The rule and its comments contemplate a level of substance and detail that is not present in Respondent's receipts.[52] His receipts gave an extremely brief description of the services he provided and indeed are not fully legible. Respondent asserts that it is clear that his fee was hourly in some instances and fixed in other instances. This is not apparent on the face of the receipts, nor is there any reason to believe that a layperson—particularly a layperson with Diallo's limited communication skills—would understand as much. It is important to note that on at least one occasion, when Diallo paid him to attend the USCIS interview, Respondent did not even give her a receipt. Indeed, Respondent's approach led to significant confusion for Diallo. She mistakenly believed that he would charge $500.00 per court appearance, for instance. Had he followed the rule, Diallo would have understood her financial responsibility and later conflicts would have been avoided.[53]

Just as important, Respondent's receipts also fall short because he communicated his fees in writing after Diallo paid the fees, not at the outset of the representation. Each receipt only indicated what service the payment had been made for, not what Respondent's fees would be going forward. Respondent thus did not communicate in writing about his fees "before or within a reasonable time after commencing the representation," as required by Colo. RPC 1.5(b).[54]

Respondent's defense that it was Diallo's preference to "contract one commitment at a time"[55] is unavailing. Although Diallo was entitled to engage Respondent on a task-by-task basis, that did not obviate his duty to set forth his fees for the envisioned course of representation in writing. A client cannot, of course, waive the applicability of the Rules of Professional Conduct.

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[51] Colo. RPC 1.5 cmt. 2. Comment 11 to Colo. RPC 1.5 states that any written fee statement for an advance fee "should include a description of the benefit or service that justifies the lawyer's earning the fee, the amount of the advance unearned fee, as well as a statement describing when the fee is earned."

[52] *See Attorney Grievance Comm'n of Md v. Culver*, 849 A.2d 423, 445 (Md. 2004) (finding that an attorney violated Rule 1.5(b) when he failed to set forth his hourly rate in his engagement letter or first bill, he disclosed his hourly rate in an invoice provided more than six months later, and he then indicated an increase in his hourly fee in a later invoice); *Shaw v. Manufacturers Hanover Trust Co.*, 499 N.E.2d 864, 866 (N.Y. 1986) ("courts as a matter of public policy give particular scrutiny to fee arrangements between attorneys and clients, casting the burden on attorneys who have drafted the retainer agreements to show that the contracts are fair, reasonable, and *fully known and understood by their clients*") (emphasis added).

[53] *See Starkey, Kelly, Blaney & White v. Estate of Nicolaysen*, 796 A.2d 238, 243 (N.J. 2002) (explaining that the purpose of requiring a written statement of fees is to avoid misunderstandings, fee disputes, and fraud).

[54] *See Koleci v. Statewide Grievance Comm.*, No. HHDCV126028520S, 2013 WL 3119036, at *3 (Conn. Super. Ct. May 29, 2013) (affirming a reviewing committee's decision that a fee receipt did not constitute a written fee agreement under Rule 1.5(b)).

[55] Answer ¶ 51.

The People also allege that Respondent's retention of an extra $500.00—a figure more than the debt reflected on his ledger in March 2014—amounted to the collection of an unreasonable fee in violation of Colo. RPC 1.5(a). According to the People, his fee was unreasonable because it was more than his agreed-upon fee, as denoted on his ledger and handwritten notes.

We find that Colo. RPC 1.5(a) is not the proper vehicle for addressing this misconduct.[56] Colo. RPC 1.5(a) is principally directed at a different type of misconduct: charging a fee that is too high for the nature of the work performed.[57] Here, Respondent's charge was not excessive. Large testified that his firm normally charges between $5,000.00 and $20,000.00 for an asylum representation, depending on the complexity of the case. Likewise, Respondent's hourly fee of $200.00 is certainly not excessive; Large testified that his own hourly fee is $275.00. Moreover, we have already accounted for Respondent's failure to set forth his fee in writing under Colo. RPC 1.5(b). We thus decline to find a violation of Colo. RPC 1.5(a).

Colo. RPC 1.16(d)

Next, the People assert that, to the extent Respondent argues he only represented Diallo up through the individual hearing, he violated Colo. RPC 1.16(d) by withholding for months the immigration court's order. Colo. RPC 1.16(d) provides that 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. Respondent, however, has not argued in this proceeding that his representation of Diallo ended after her individual hearing. To the contrary, he asserted—and the evidence shows—that he continued to consult with her about her immigration status through at least March 2014. Colo. RPC 1.16(d) thus does not apply, and we do not find a rule violation.

Colo. RPC 8.4(c)

Last, the People charge that Respondent violated Colo. RPC 8.4(c), which proscribes conduct involving dishonesty, fraud, deceit, or misrepresentation. The People assert that after his March 2014 meeting with Diallo, Respondent dishonestly retained $500.00 that he had not earned.[58] Respondent, meanwhile, argues that he did earn the $500.00 in question

[56] The Hearing Board observes that Diallo's consent to pay the $500.00 has no bearing on whether Respondent's fee was reasonable. *See In re Sinnott*, 845 A.2d 373, 379 (Vt. 2004) ("lawyers, unlike some other service professionals, cannot charge unreasonable fees even if they are able to find clients who will pay whatever a lawyer's contract demands").

[57] *See* Colo. RPC 1.5(a)(1)-(8), setting forth factors governing whether a fee is reasonable, such as the fee customarily charged in the locality for like services.

[58] In their complaint, hearing brief, and oral argument, the People did not elucidate whether their Colo. RPC 8.4(c) claim is premised on the theory that Respondent knowingly converted client funds or the theory that he made a misrepresentation by omission by failing to tell Diallo that his ledger reflected a debt of just $2,000.00. If the People's claim were one of knowing conversion, it follows that the People would have directed the Hearing Board's attention to ABA *Standard* 4.1, which states that disbarment is normally

through the series of telephone consultations with Diallo that took place after her individual hearing.

Whether Respondent demanded $2,500.00 or Diallo proffered these funds on her own initiative,[59] the Hearing Board concludes that Respondent violated Colo. RPC 8.4(c). After he accepted $2,500.00 from Diallo, giving her a receipt indicating that her payment was only for her individual hearing, Respondent made a misrepresentation by omission: though he realized that his internal ledger showed a debt of just $2,000.00, he did not inform Diallo of this fact or of his decision to apply the additional $500.00 toward their phone consultations. Lawyers are obligated under Colo. RPC 1.4(a) and 1.5(b) to inform clients about the fees they charge.[60] Lawyers may not withhold such information to serve their own interests.[61] Upon consulting his ledger, Respondent was obligated to inform Diallo that she had paid him more than the balance reflected on the ledger and that he was directing the payment to a set of services other than what he had indicated on the receipt. This is particularly true given Respondent's previous failure to provide a clear written fee agreement to Diallo. Instead, benefitting from that failure, Respondent received a payment that exceeded his own calculations, yet he kept silent and retained the windfall.[62] His silence profited him, since he received unexpected money and avoided any dispute with Diallo.[63] This conduct contravened Colo. RPC 8.4(c).

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[64] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[65] When imposing a sanction after a finding of lawyer misconduct, a

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appropriate when a lawyer knowingly converts client property. The People did not cite this standard, and they argue that a short served suspension is appropriate. The Hearing Board thus understands that the theory underlying the Colo. RPC 8.4(c) claim to be one of misrepresentation. We further note that the evidence does not support a finding that Respondent knowingly converted client funds because the People never adduced clear and convincing evidence showing that Respondent did not earn the $500.00 in question.

[59] As noted above, we find the evidence on this issue to be in equipoise, and we thus assume that Diallo proffered the funds on her own initiative.

[60] *See* Colo. RPC 1.4 cmt. 7A ("Information provided to the client under Rule 1.4(a) should include information concerning fees charged, costs, expenses, and disbursements with regard to the client's matter.").

[61] Colo. RPC 1.4 cmt. 7 ("A lawyer may not withhold information to serve the lawyer's own interest or convenience . . . .").

[62] We reject as disingenuous Respondent's theory that Diallo calculated that she owed him $500.00 for the phone consultations, in accordance with his own after-the-fact calculations. It is highly implausible that Diallo would have kept scrupulous records of the time spent on the multiple phone calls and that she would have computed that Respondent's cumulative time added up to $500.00. And although Diallo may have offered to pay Respondent $2,500.00 on her own initiative, she almost certainly would have made that offer based on a misunderstanding of the balance due, not based on a desire to compensate him for phone calls.

[63] If Respondent had informed Diallo about the discrepancy and she had claimed an interest in the $500.00, he would have been required to keep the disputed funds separate from his own funds under Colo. RPC 1.15(c) (2008).

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

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

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: Under the conceptual framework of the ABA *Standards*, Respondent disregarded duties he owed to his client by violating Colo. RPC 1.4(b) and 8.4(c), while he disregarded duties owed as a professional by contravening Colo. RPC 1.5(b).

Mental State: We conclude that Respondent violated Colo. RPC 1.4(b) and 1.5(b) with a reckless state of mind. His conduct was certainly more than negligent, but based on the communication challenges he and Diallo experienced, we do not think he fully realized the import of his actions vis-à-vis his client. We find that he violated Colo. RPC 8.4(c) with a knowing state of mind.

Injury: We recognize that Respondent almost certainly achieved the best legal result available to Diallo given her circumstances, and he thus did not impair her legal rights. However, Respondent's actions did in fact cause Diallo injury. Respondent caused Diallo mental strain by failing to be transparent about his fees and the legal aspects of her case. By not adequately counseling Diallo in a manner she could comprehend about the available legal avenues, Respondent also deprived her of the opportunity to seek asylum, even though her chances of winning such a case would have been slim. In addition, his conduct triggered Diallo's filing of the small claims case, and thus led to a waste of her time and money, as well as judicial resources. Respondent also wasted the time of Diallo and a USCIS agent by not advising Diallo that she was unlikely to obtain an I-94 at her InfoPass appointment. Respondent's misrepresentation by omission, meanwhile, harmed Diallo because he took her money in contravention of the agreement he had verbally created with her.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

The presumptive sanction in this case is established by Respondent's most serious conduct: his misrepresentation to Diallo in violation of Colo. RPC 8.4(c). According to ABA *Standard* 4.62, suspension is generally appropriate when a lawyer knowingly deceives a client, causing injury or potential injury to the client.

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of the sanction to be imposed, while mitigating circumstances may warrant a reduction in the severity of the sanction.[66] Respondent did not introduce evidence of any mitigating factors at the disciplinary hearing. As explained below, however, the

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

People concede that one mitigating factor applies, and we consider that mitigator along with five aggravators in deciding the appropriate sanction.

Prior Disciplinary Offenses – 9.22(a): In 2008, Respondent stipulated to a private admonishment. In that matter, Respondent admitted that he failed to review an immigration application his assistant prepared for a client and that the application was denied because it was insufficient on its face. In addition, Respondent agreed that he had not communicated adequately with his client about the application. In these regards, Respondent conceded, he violated Colo. RPC 1.4(a) and 1.3. Although the conduct in that case was not particularly serious, the Hearing Board accords it some weight in aggravation because it is both relatively recent and bears some resemblance to the misconduct in the present matter.[67]

Pattern of Misconduct – 9.22(c): The People ask us to apply this factor in aggravation. We have not found that Respondent engaged in a sustained course of similar misbehavior, however, so we find this factor inapplicable.

Multiple Offenses – 9.22(d): Respondent engaged in several distinct types of misconduct in this case. We therefore apply this factor in aggravation.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): The People urge us to apply this aggravator because Respondent maintains that he did not violate the Rules of Professional Conduct. We decline to do so. This is not an instance where Respondent has unreasonably refused to acknowledge egregious or intentional misconduct, and he should not be unfairly penalized for mounting a defense.[68]

Vulnerability of Victim – 9.22(h): At the time of the representation, Diallo was an immigrant without legal status in the United States, she had very little education, and her communication skills were limited.[69] We thus consider her a vulnerable victim.

Substantial Experience in the Practice of Law – 9.22(i): Respondent was licensed in 1985. As a longstanding practitioner, he should have been well-accustomed to setting forth his legal fees in writing and effectively communicating with clients.

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[67] *See In re Jones*, 951 P.2d 149, 152 (Or. 1997) (indicating that factors to consider in applying this standard include the seriousness of the prior misconduct and resulting sanction; the similarity of the prior offense to the offense in the instant case; the number of prior offenses; the recency of the prior offense; and whether the respondent was sanctioned for the prior offense before committing the offense underlying the case at bar).

[68] *In re Disciplinary Proceeding Against Marshall*, 217 P.3d 291, 307 (Wash. 2009) (declining to apply this aggravator, stating that "[a]lthough [the respondent] has shown no penitence for his actions, we do not penalize him for making arguments in his defense"); *see Annotated Standards for Imposing Lawyer Sanctions* at 434.

[69] *See Cincinnati Bar Ass'n v. Sigalov*, 975 N.E.2d 926, 940 (Ohio 2012) (noting that "immigration clients often have a heightened susceptibility to attorney misconduct due to language barriers and unfamiliarity with the legal system"); *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 899-900 (Tenn. 2010) (observing that immigration clients often have limited communication skills, face difficult personal circumstances, and are "seeking assistance in a particularly weighty matter").

Indifference to Making Restitution – 9.22(j): In our view, Respondent should have returned the $500.00 in question to Diallo. Although we have not found clear and convincing evidence of knowing conversion, we do find persuasive evidence that Respondent's own failures of communication led to the dispute about the $500.00, and we find that Diallo did not understand Respondent might charge her for phone consultations.

Cooperative Attitude Toward Proceedings – 9.32(e): The People concede that this mitigator should apply because Respondent has cooperated during the disciplinary proceeding. The Hearing Board agrees.

Analysis Under ABA *Standards* and Colorado Case Law

The Colorado Supreme Court has directed the Hearing Board to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors.[70] We are mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[71] Though prior cases are helpful by way of analogy, hearing boards must determine the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

Here, the People ask the Hearing Board to impose a short served suspension. Respondent himself made no argument about the appropriate level of discipline.

In evaluating relevant case law, we primarily look to cases involving fee violations and misrepresentations to clients, since communication violations rarely stand alone and seldom have warranted discipline more severe than a private admonition or public censure.[72]

The Colorado Supreme Court has addressed relatively few cases of lawyers failing to set forth the basis of their fees in writing. The most comparable case is *In re Wimmershoff*.[73] In that matter, the Colorado Supreme Court publicly censured a lawyer for charging an unreasonable fee, failing to explain the basis of his fee, and violating rules governing contingent fee arrangements, where two aggravators and one mitigator applied.[74]

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[70] *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).

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

[72] *See, e.g., People v. Brady*, 923 P.2d 887, 889 (Colo. 1996) (publicly censuring a lawyer who violated not only Colo. RPC 1.4(b) but also Colo. RPC 1.3, 1.4(a), and 1.16(d)).

[73] 3 P.3d 417 (Colo. 2000).

[74] *Id.* at 418; *cf. People v. Wilson*, 953 P.2d 1292, 1293-94 (Colo. 1998) (publicly censuring a lawyer who charged an unreasonable fee, violated rules concerning division of fees, and interfered with the client's right to discharge the lawyer; the opinion noted that a suspension generally would be more appropriate for such misconduct but determined that a public censure would suffice because the lawyer had agreed to comply with substantial mentoring and other conditions).

Cases involving misrepresentations to clients, meanwhile, have yielded a range of sanctions, depending on the severity of the conduct. On the more lenient end of the scale is *People v. Yates*.[75] In that matter, a lawyer violated Colo. RPC 8.4(c), among other rules, by leading his client, an auto dealership, to believe the lawyer could write off his legal fees in exchange for a down payment on a vehicle, when in fact his law firm's compensation policy would not permit such an arrangement.[76] The lawyer also neglected a legal matter.[77] Considering the People's stipulation that "'[t]his case is essentially one of neglect,' rather than fraud, dishonesty, or deceit," the Colorado Supreme Court approved the parties' stipulation to a public censure.[78]

In several cases where an attorney's misrepresentations were more pronounced or extensive, the Colorado Supreme Court has imposed suspensions for a year and a day. For instance, in *People v. Wechsler*, a lawyer was suspended for a year and a day when he failed to place client funds in a trust account, made misrepresentations regarding the location of the funds, and failed to provide an accounting to a client for nearly a two-year period, among other misconduct, where three mitigating factors and two aggravating factors were present.[79]

On the whole, we find that the present case lies on the spectrum between *Yates* and *Wechsler*. Respondent's conduct was certainly not negligent, since he enriched himself to the detriment of a vulnerable client. But we also recognize that he did not engage in fraud or in a continuing pattern of deceit.

Taking into consideration the cases discussed above and the predominance of aggravating factors here, the Hearing Board concludes that a suspension for one year and one day, with three months served and the remainder stayed upon the successful completion of a two-year period of probation, is appropriate. As conditions of probation, Respondent will be required to attend ethics school and to meet regularly with a practice monitor. We believe this sanction will help to remedy Respondent's recent pattern of laxity in complying with the Rules of Professional Conduct.

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[75] 952 P.2d 340 (Colo. 1998).
[76] *Id*. at 341.
[77] *Id*.
[78] *Id*.; *see also People v. Johnston*, 955 P.2d 1051, 1052 (Colo. 1998) (publicly censuring a lawyer who sent a client a letter that misled the client to believe that the client's case was still pending, where one aggravator and three mitigators applied).
[79] 854 P.2d 217, 223 (Colo. 1993); *see also People v. Shields*, 905 P.2d 608, 610-12 (Colo. 1995) (suspending for one year and one day a lawyer who intentionally billed his client for time not devoted to authorized legal services by submitting inaccurate bills that fraudulently misrepresented attorney time notations over a sustained period, where one mitigator and three aggravators applied); *People v. Smith*, 888 P.2d 248, 249-50 (Colo. 1995) (suspending for a year and a day a lawyer who made several misrepresentations to a client about trial settings and continuances, and who then paid the client money from a "settlement" he had fabricated, where three aggravating factors and three mitigators applied).

IV. CONCLUSION

Respondent faced challenging circumstances in representing a client who had difficulty understanding legal concepts. But Respondent failed to take adequate measures to ensure his client comprehended and agreed to the legal strategy he had embarked upon. Nor did he ensure his client understood his fee structure. Moreover, Respondent was not candid with his client when she paid him more than his accounting ledger reflected as her debt. This misconduct warrants a suspension for one year and one day, with three months served and the remainder stayed upon the successful completion of a two-year period of probation.

V. ORDER

The Hearing Board therefore **ORDERS**:

1. **PATRICK C. HYDE**, attorney registration number 14633, is **SUSPENDED FOR ONE YEAR AND ONE DAY, WITH THREE MONTHS SERVED AND THE REMAINDER STAYED** upon completion of a two-year period of probation. The **SUSPENSION SHALL** take effect only upon issuance of an "Order and Notice of Suspension."[80]

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

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

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

5. Respondent **MUST** comply with the following conditions during his two-year period of probation:

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

    b. He will attend at his own expense the ethics school offered by the People, no later than six months after his probation begins; and

[80] 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.

c. He will meet regularly with a practice monitor selected jointly by him and the People. During the first year of the probation, the meetings will take place monthly; during the second year of the probation, the meetings will take place once every two months. The monitoring will be designed to implement and consistently employ effective systems for regular communication with clients and compliance with fee rules, as well as to ensure that Respondent has effective systems in place for calendaring and other aspects of law firm management. Each monitoring session must include reviews of Respondent's client files, selected at random. Respondent and the People shall select the monitor and develop a monitoring plan to be filed for approval by the Hearing Board **no later than the effective date of the probation**. Also by that date, Respondent shall provide a copy of this opinion to the monitor and execute an authorization for release, requiring the monitor to notify the People if Respondent fails to fully participate in the required monitoring. The monitor must notify the People if Respondent fails to fully participate in the required monitoring. The monitor must submit reports to the People quarterly. Respondent is responsible for bearing all costs of complying with this condition of probation.

6. If, during the period of probation, the People receive information that any condition may have been violated, the People may file a motion with the PDJ specifying the alleged violation and seeking an order that requires Respondent to show cause why the stay should not be lifted and the sanction activated for violation of the condition. The filing of such a motion will toll any period of suspension and probation until final action. Any hearing will be held under C.R.C.P. 251.7(e). If Respondent's probation is revoked for any reason, he will be required to petition for reinstatement to the practice of law under C.R.C.P. 251.29(c).

7. No more than twenty-eight days and no less than fourteen days prior to the expiration of the period of probation, Respondent **MUST** file an affidavit with the People stating that he has complied with all terms of probation and shall file with the PDJ notice and a copy of such affidavit and application for an order showing successful completion of the period of probation. Upon receipt of this notice and absent objection from the People, the PDJ will issue an order showing that the probation was successfully completed. The order will become effective upon the expiration of the period of probation.

8. The parties **MUST** file any posthearing motion or application for stay pending appeal with the Hearing Board **on or before July 27, 2016**. Any response thereto **MUST** be filed within seven days.

9. Respondent **SHALL** pay the costs of these proceedings. The People **SHALL** submit a statement of costs **on or before July 20, 2016**. Any response thereto **MUST** be filed within seven days.

DATED THIS 6th DAY OF JULY, 2016.

Original Signature on File
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Original Signature on File
STEVEN MEYRICH
HEARING BOARD MEMBER

Original Signature on File
ANDREW A. MUELLER
HEARING BOARD MEMBER

Copies to:

Jacob M. Vos Office of Attorney Regulation Counsel	Via Email j.vos@csc.state.co.us
Patrick C. Hyde Respondent	Via Email lawoffice@patrickchydepc.com
Steven Meyrich Andrew A. Mueller Hearing Board Members	Via Email Via Email
Christopher T. Ryan Colorado Supreme Court	Via Hand Delivery