***People v. Nina H. Kazazian*. 21PDJ031. March 3, 2023.**

A hearing board disbarred Nina H. Kazazian (attorney registration number 21910). The disbarment takes effect on May 24, 2023.

In 2016, Kazazian sued an accounting firm and the firm's CEO, alleging they had breached a settlement agreement. Kazazian knew that her allegation was false, however, because she never accepted the opposing parties' settlement offer. During the litigation, Kazazian twice threatened to report opposing counsel to disciplinary authorities if he did not agree to her demands regarding the litigation. She similarly threatened to grieve a nonparty to the case. Kazazian also telephoned the firm's CEO to discuss settlement, even though Kazazian knew that the CEO was represented in the case. Litigation related to Kazazian's frivolous claim was ongoing as of her disciplinary hearing, by which time the opposing parties had incurred more than $350,000.00 in attorney's fees from the frivolous lawsuit.

Meanwhile, in 2018, Kazazian incorporated an entity under the exact name of the accounting firm after the firm filed articles of dissolution. In 2019, Kazazian sued the opposing counsel on behalf of the newly incorporated entity, asserting facts that were true as to the accounting firm but false as to Kazazian's newly incorporated entity. She did not explain in the complaint that the plaintiff—her newly created entity—and the accounting firm it purported to be were different entities, with different origins and ownership structures. Kazazian moved to voluntarily dismiss the complaint only after the defendant's response threatened to expose the sham.

Through this conduct, Kazazian violated Colo. RPC 3.1 (a lawyer must not assert frivolous claims); Colo. RPC 3.3(a)(1) (a lawyer must not knowingly make a false statement of material fact or law to a tribunal); Colo. RPC 4.2 (a lawyer must not communicate about the subject of a client representation with a person the lawyer knows to be represented by counsel in the matter); Colo. RPC 4.5(a) (a lawyer must not threaten criminal, administrative, or disciplinary charges to obtain an advantage in a civil matter); Colo. RPC 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Colo. RPC 8.4(d) (it is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice).

The case file is public per C.R.C.P. 251.31. Please see the full opinion below.

| SUPREME COURT, STATE OF COLORADO<br>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE<br>THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE<br>1300 BROADWAY, SUITE 250<br>DENVER, CO 80203 | |
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| **Complainant:**<br>THE PEOPLE OF THE STATE OF COLORADO<br><br>**Respondent:**<br>NINA H. KAZAZIAN, #21910 | Case Number:<br>**21PDJ031** |
| **OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)** | |

Nina H. Kazazian ("Respondent") committed misconduct in two lawsuits by knowingly asserting frivolous claims. In one case, Respondent dishonestly claimed to have accepted a settlement agreement in a small claims matter and then sued to enforce the purported agreement in district court after the small claims court awarded her a judgment for less than the proposed settlement amount. The claim sparked multi-year litigation in the district and appellate courts, resulting in the opposing parties incurring over $350,000.00 in attorney's fees. During the litigation, Respondent telephoned a representative of one of the parties and attempted to discuss settlement, even though the party was represented by counsel. In addition, Respondent twice threatened opposing counsel that she would report him to disciplinary authorities if he did not accede to her demands regarding the case. Respondent also threatened to grieve the lawyer for a nonparty to the case unless the lawyer retracted factual statements he made in a motion to quash Respondent's subpoena on the nonparty.

In a second matter, Respondent sued the law firm for the opposing counsel in the first case described above, deceptively purporting to act on behalf of the opposing counsel's corporate client from the first case. In her lawsuit, Respondent sought to recoup the money she had paid to opposing counsel to satisfy judgments awarded in the first matter. Respondent's misconduct warrants disbarment.

## I. PROCEDURAL HISTORY

On July 15, 2021, Jacob M. Vos of the Office of Attorney Regulation Counsel ("the People") filed an amended complaint[1] against Respondent with the Office of the Presiding

[1] The People initially filed a complaint on May 28, 2021. The Court granted the People's motion to amend that complaint on August 2, 2021.

Disciplinary Judge ("the Court"), alleging violations of Colo. RPC 3.1 (Claim I); Colo. RPC 3.3(a)(1) (Claim II); Colo. RPC 4.2 (Claim III); Colo. RPC 4.5(a) (Claim IV); Colo. RPC 8.4(c) (Claim V); and Colo. RPC 8.4(d) (Claim VI). Respondent answered the People's amended complaint on August 23, 2021. The Court set the matter for a three-day hearing to take place on January 11-13, 2022.

On December 30, 2021, the Court denied Respondent's corrected motion for summary judgment. On January 7, 2022, the Court continued the hearing because Respondent's erstwhile counsel, Walter N. Houghtaling, was unable to participate due to medical reasons. On February 15, 2022, the Court granted Houghtaling's motion to withdraw. On February 23, 2022, the Court denied Respondent's pro se motion to reconsider the withdrawal order and her request that the Court appoint counsel for her. The Court reset the case for a hearing to take place on August 9-11, 2022.

On Respondent's motion, the Court again continued the hearing on July 18, 2022, so that Respondent's new counsel could prepare her case,[2] and it reset the hearing for October 4-6, 2022.[3] But on September 29, 2022, the Court vacated the hearing and placed this case in abeyance under C.R.C.P. 251.23(d) after Respondent alleged that she suffered from an infirmity that impaired her ability to adequately defend herself against the People's claims.[4] That day, the Court transferred Respondent to disability inactive status under C.R.C.P. 251.23(d) in case number 22PDJ056.[5] On November 7, 2022, the Court removed this disciplinary case from abeyance and reset the hearing.

From January 4-6, 2023, a Hearing Board, comprising Presiding Disciplinary Judge Bryon M. Large ("the PDJ") and lawyers Matthew Kirk Hobbs and Katrin Miller Rothgery, held a disciplinary hearing under C.R.C.P. 251.18. Vos represented the People, and Melichar appeared as Respondent's counsel. The PDJ admitted the parties' stipulated exhibits S1-S26;[6] the People's exhibits 1-35 and 37-40;[7] and Respondent's exhibits K and L. The PDJ took judicial notice of the court files in Denver District Court case numbers 15CV32907 and

[2] Jason D. Melichar filed a limited entry of appearance in this case on July 1, 2022, after Respondent terminated lawyer Jeffrey M. Villanueva on June 21, 2022. The Court granted Melichar's motion to withdraw from this case on February 21, 2023.

[3] *See* "Second Order Resetting Hearing and Amending Selected Deadlines in Scheduling Order" (July 18, 2022).

[4] *See* "Order Suspending Proceeding and Placing Case in Abeyance Under C.R.C.P. 251.23(d)" (Sept. 29, 2022).

[5] Respondent has not petitioned to reinstate her law license and thus remains on disability inactive status.

[6] The Hearing Board found there was no need to rely on exhibit S2 and thus does not consider that exhibit in the opinion.

[7] The PDJ entered into the record a certified original of the People's exhibit 37, the transcript from Respondent's deposition dated November 12, 2021.

16CV32258. The Hearing Board received testimony from Respondent, Michael G. Bohn, Armando Aguilar, Wendy Weigler,[8] Charles E. Fuller, Nadine Pietrowski, and Donna Scherer.[9]

## II. FINDINGS OF FACT

The findings of fact are drawn from testimony offered and evidence admitted at the hearing. Respondent was admitted to the practice of law in Colorado on October 15, 1992, under attorney registration number 21910.[10] She is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[11]

### The GHP Matters

*Respondent's Small Claims Court Case Against GHP*

Respondent's involvement with GHP Horwath, P.C. ("GHP") began with a small claims matter. On August 30, 2013, Respondent filed a notice, claim, and summons to appear for trial in Eagle County small claims court, alleging a breach of contract and civil theft against GHP, an accounting firm.[12] Two years earlier, Respondent retained GHP during her divorce proceeding to produce an expert valuation of her then-husband's business. But GHP withdrew from Respondent's case without producing an expert report.[13] In the small claims case, Respondent sought $7,500.00 to recoup the $5,000.00 retainer she had paid GHP, plus costs and attorney's fees.[14]

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[8] During the hearing, Respondent, through counsel, moved to cross-examine Weigler personally. In a suppressed portion of the record, the PDJ denied Respondent's request under C.R.E. 611(a). The PDJ found that granting Respondent's request risked biasing the Hearing Board against Respondent, that Respondent's counsel had rendered competent and effective representation throughout the proceeding, and that denying Respondent's request did not constitute a denial of her right to cross-examine Weigler. *See People v. Lesney*, 855 P.2d 1364, 1367 (Colo. 1993) ("As long as the restriction is not so severe as to constitute a denial of that right, limiting the scope and extent of cross-examination is a matter usually within the sound discretion of the trial court.").

[9] At the hearing, Respondent informed the Court that she would not call Dr. James Baroffio to testify in her case. The Court thus **DEEMED MOOT** the People's "[Confidential] Motion to Limit Testimony of Dr. Baroffio" and now **SUPPRESSES** the People's motion.

[10] Compl. at 1 ¶ 1; Answer at 1-2 ¶ 1.

[11] Compl. at 1 ¶ 1; Answer at 1-2 ¶ 1.

[12] Ex. S1.

[13] At the hearing, Respondent testified that GHP withdrew from Respondent's domestic relations matter after her lawyer withdrew from the case.

[14] Ex. S1.

Lawyer Michael Bohn represented GHP in the small claims case.[15] Bohn successfully moved to transfer the case to Denver County small claims court. After the transfer, Respondent was granted permission to voluntarily dismiss her case without prejudice. Bohn appealed the dismissal.[16] Ultimately, the Denver District Court remanded the matter to the small claims court.

The parties went to hearing on the Denver small claims matter in July 2015. That September, the small claims court issued an oral decision awarding Respondent $2,100.00.[17] The small claims court deferred entering judgment pending the resolution of the parties' requests for attorney's fees and costs.[18] The parties set a hearing on their claims for costs and attorney's fees for May 23, 2016.[19]

*Failed Settlement Negotiations*

On the morning of Thursday, May 19, 2016, four days before the hearing on attorney's fees, Bohn sent Respondent an email with two attached files: "Final settlement.pdf" and "Stip to Dismissal final.pdf."[20] The first file was an unsigned document titled "Settlement Agreement and Mutual Releases," reflecting GHP's offer to settle the case for $10,000.00.[21] The fourth recital in the offer stated, "the Parties wish to provide for the disposition of claims which were or could have been asserted in the Civil Proceedings as well as resolve all matters in dispute against them, including the Award and attorney fees and costs . . . ."[22] The second file attached to Bohn's email was a proposed joint motion to dismiss the matter with prejudice.[23]

In the email Bohn wrote, "GHP has authorized me to make a one-time settlement proposal which is memorialized in the attached Settlement Agreement and Mutual

[15] Bohn had a limited history with Respondent from her divorce matter. He briefly consulted with her in 2011 but, according to Bohn, never formed a lawyer-client relationship. In contrast, Respondent maintained that she attempted to retain Bohn following the consultation and attempted to disqualify him from the small claims case on that basis. At the hearing, Respondent claimed that Bohn failed to protect her confidential information and engaged in an impermissible conflict of interest by representing GHP in the small claims case.

[16] Bohn explained that he appealed the order because Respondent threatened to refile her claim in Denver District Court seeking more than $100,000.00 in damages.

[17] *See also* Ex. 1 at 112.

[18] Bohn testified that GHP sought between $11,000.00 and $12,000.00 in attorney's fees and costs, while Respondent sought $54,000.00.

[19] Exs. S3-S4.

[20] Ex. 1 at 111.

[21] Ex. 1 at 112-15.

[22] Ex. 1 at 112.

[23] Ex. 1 at 116.

Release."[24] Bohn directed Respondent to return a signed and notarized copy by email by midnight that night if she agreed to the terms.

Respondent replied to the email the morning of May 19, asking Bohn to send her a notarized copy of the agreement signed by GHP so that she would "know it's a valid offer that would be binding upon my signature."[25] At 1:44 p.m. that day, Bohn sent Respondent a copy of the proposed agreement signed by Nadine Pietrowski, GHP's chief executive officer, and reaffirmed the midnight deadline for Respondent to respond.[26]

Respondent emailed Bohn about an hour after the midnight deadline, on Friday, May 20, stating "If you tell me you'll still honor [GHP's proposed agreement], I can sign it before a notary and return it to you by email (with original to follow by mail) mid-morning before noon. Please call to confirm."[27] Bohn replied that GHP agreed to Respondent's proposal, adding that "we need the signed document as you have indicated, i.e. mid-morning before noon."[28] In the sixteen minutes that followed, Respondent twice emailed Bohn, asking him to call her regarding questions about the settlement.[29] Bohn did not return Respondent's calls.[30] Shortly before the deadline, at 11:26 a.m., Respondent again emailed Bohn, writing, "I still have not heard from you. I have issues with the documents you sent . . . and the terms in those, which are not acceptable. If you want to resolve this, you will need to call me. The hearing is still on for Monday."[31]

At 1:04 p.m. that day, Respondent sent another email to Bohn, with the subject line "CRE 408—STIPULATED JUDGMENT."[32] Respondent attached to her email a document she signed and captioned "Stipulated Final Judgment," which offered to settle the matter for $10,800.00 plus post-judgment interest and any attorney's fees and costs incurred in collecting the judgment.[33] In her email, Respondent wrote:

> I still have not heard anything from you in response to my emails this morning.
>
> In my opinion, the best way to resolve this is simply by filing a stipulated judgment. I've drafted and signed what is acceptable to me. Please have your

[24] Ex. 1 at 111.
[25] Ex. 2 at 121.
[26] Ex. 2 at 119. Bohn clarified at the hearing that Peitrowski signed the document in her official role as GHP's CEO, not in an individual capacity.
[27] Ex. 2 at 119.
[28] Ex. 2 at 119.
[29] Ex. 2 at 118.
[30] At the disciplinary hearing, Bohn testified that he avoided communicating with Respondent by telephone, preferring to keep their communications in writing.
[31] Ex. 2 at 118.
[32] Ex. 3 at 127.
[33] Ex. 3 at 128-29.

> client sign this, you sign it, send me the fully executed copy simultaneously with filing it with the court ASAP before 3 pm today, if you want to resolve this without going to the hearing on Monday. My offer and assent to this Stipulated Judgment shall be deemed null and void if you fail to file it with the court before 3:00 pm today . . . .[34]

At the disciplinary hearing, Bohn said that GHP did not accept Respondent's counter-offer.

*The Hearing on Attorney's Fees*

On the eve of the hearing, Respondent submitted to the small claims court her list of hearing exhibits.[35] The exhibits did not include a copy of any settlement agreement.[36] On May 23, 2016, the parties proceeded to the hearing and represented to the small claims court that they had not reached a settlement. At the conclusion of the hearing, the small claims court entered judgment in favor of Respondent for $2,360.00, including attorney's fees and costs.

Later that day, after the hearing concluded and the Court entered judgment, Respondent emailed Bohn. In the email's subject line, Respondent wrote, "Re: Rule 408 Settlement offer—signed agreement and address."[37] In the email, Respondent stated, "The attached agreement was signed before noon on 5/20/16. The original is in the mail. Please send payment to me at [P.O. Box address]."[38] Attached to the email was GHP's settlement agreement for $10,000.00, fully executed by both parties.[39] Respondent also attached a copy of the joint motion to dismiss the case, which she had signed.[40] Bohn testified that he was upset when he received the email, which Respondent had also sent to his client.

GHP did not pay Respondent the settlement amount, Bohn said. Instead, Bohn sent Respondent, via a private process server, a check for the judgment amount of $2,360.00. Citing mistrust as a result of prior dealings with Respondent, Bohn testified that he attempted to use a process server to deliver the funds to avoid any future confusion about the funds being delivered to Respondent. Even after multiple attempts, however, the process server was unable to personally serve Respondent with the check, so Bohn mailed the check to Respondent's P.O. Box. Ultimately, Respondent cashed the $2,360.00 check.

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[34] Ex. 3 at 127.
[35] Ex. S5.
[36] Ex. S5 at 148-49.
[37] Ex. 4 at 131.
[38] Ex. 4 at 131.
[39] Ex. 4 at 132-35.
[40] Ex. 4 at 136.

*Breach of Settlement Agreement Lawsuit ("The Denver District Court case")*

On June 24, 2016, Respondent filed a new lawsuit in Denver District Court,[41] this time alleging that GHP and Pietrowski breached the settlement agreement from the Denver small claims court case. Respondent claimed that the parties "entered into a valid, written contract dated May 19, 2016 . . . ."[42] Respondent sought "not less than $10,000.00" for compensatory damages plus fees and costs incurred in enforcing the settlement agreement.[43] Bohn answered on GHP's and Pietrowski's behalf on July 27, 2016, asserting that Respondent's claims were frivolous, groundless, and vexatious, and demanding a jury trial.[44] That summer, Respondent moved for summary judgment.[45] Bohn filed a cross-motion for summary judgment.

At the disciplinary hearing, Bohn testified that Respondent did not execute and return the settlement agreement on May 20, 2016, as she represented in the complaint and in her motion for summary judgment. Bohn also stated that Respondent inaccurately argued in her reply in support of her motion and in her response to GHP's cross-motion for summary judgment that "[GHP and Pietrowski] also acknowledge that they renewed the [settlement] offer and modified the conditions of acceptance of their offer on May 20, 2016, and removed the requirement that the counter-signed agreement had to be delivered to them by a time certain."[46] In rejoinder, Bohn pointed to his email sent the morning of May 20, 2016, establishing a deadline of noon that day to receive the signed agreement from Respondent.

On February 17, 2017, Denver District Court Judge Ross Buchanan denied Respondent's motion for summary judgment and granted GHP's cross-motion for summary judgment, finding as a matter of law that no contract existed as to the settlement agreement.[47] Judge Buchanan found that because Respondent did not return the signed documents to Bohn by email before 12:00 p.m. on May 20, 2016, she failed to accept GHP's offer; that Respondent affirmatively rejected GHP's offer at 11:27 a.m. that day; and that Respondent made a counter-offer with materially different terms from GHP's offer.[48] Judge Buchanan also found that Respondent took actions that were "completely inconsistent with those of a party who honestly believed she had settled her lawsuit, clearly indicating a lack of intent to be bound by any contract," including making a counter-offer, explicitly rejecting GHP's offer, submitting the hearing exhibits the day before the hearing, and appearing at the hearing without alerting the small claims court that the parties had settled the case.[49]

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[41] Denver District Court case number 16CV32258.
[42] Ex. S6 at 155 ¶ 4.
[43] Ex. S6 at 156.
[44] Ex. S17 at 1296-97.
[45] Ex. S7.
[46] Ex. S9 at 123; Ex. S8 at 136.
[47] Ex. S10.
[48] Ex. S10 at 1401.
[49] Ex. S10 at 1402.

On December 29, 2017, Judge Buchanan awarded GHP $18,473.86 in attorney's fees and costs.[50] In the order, Judge Buchanan described the litigation as "inherently frivolous and groundless"[51] and found that Respondent had litigated her case in a manner that was "the very epitome of prosecuting an action in bad faith."[52]

Respondent appealed the summary judgment order, and both parties appealed the fee award.[53]

*GHP Dissolves and Respondent Incorporates a New "GHP"*

On April 25, 2018, while the parties' appeals were pending, GHP filed articles of dissolution with the Colorado Secretary of State.[54] On November 18, 2018, Respondent's firm Kazazian & Associates filed articles of incorporation with the secretary of state's office, naming the new entity "GHP Horwath, P.C." ("the new GHP").[55] At the disciplinary hearing, Pietrowski testified that GHP had no relationship with the new GHP.

The same day Respondent incorporated the new GHP, she wrote a check for $16,522.75 paid to the order of "GHP Horwath, P.C. and Nadine Pietrowski Jointly," writing on the memo line, "balance judgment 16CV32258."[56] Respondent filed a notice of satisfaction of judgment and proof of payment that same day.[57]

Bohn testified that he did not accept Respondent's check because it was not sufficient to satisfy the judgment entered on December 29, 2017. Moreover, he said, the parties were scheduled to appear at a hearing regarding the judgment within one week, on November 16, 2018. At that hearing, the district court directed Respondent to write a check for $18,387.54 to Bohn's trust account, thereby satisfying the judgment, including interest and fees.[58] The district court clarified that the amount would not affect any fees assessed

[50] Ex. S11 at 163.
[51] Ex. S11 at 160.
[52] Ex. S11 at 161.
[53] GHP and Pietrowski contended that they were entitled to a larger fee award. *See* Ex. S12 at 793 ¶ 1.
[54] Ex. 11. At the hearing, Bohn testified that he learned during the course of the Denver District Court case that GHP had dissolved but that he was not involved in the dissolution and does not know why the corporate entity was dissolved. Pietrowski testified that GHP filed the articles of dissolution after another corporation acquired GHP's assets and workforce.
[55] Ex. 12.
[56] Ex. 20.
[57] Ex. 5 at 698.
[58] Ex. 5 at 695. At the disciplinary hearing, the parties presented no evidence showing that Respondent made any earlier payments on the judgment that GHP had accepted.

after the parties' appeals.[59] At the disciplinary hearing, Bohn said that he wanted Respondent to write the check to his firm to protect his clients' bank account information.

Bohn testified that he did not know at that time that Respondent had incorporated a new GHP and that his client informed him about the new entity in March 2019.

*Appellate Opinions, Remand, and Litigation on Fees and Costs*

On April 18, 2019, the Colorado Court of Appeals issued opinions in the two appeals from the Denver District Court case. In Respondent's appeal, the court of appeals affirmed Judge Buchanan's summary judgment order, finding as a matter of law that Respondent did not timely accept GHP's settlement offer "[b]ecause the meaning and effect of the terms of GHP's offer were not subject to reasonable dispute, and because there is no evidence in the record that [Respondent] complied with those terms . . ."[60] The appellate court also concluded that GHP was entitled to attorney's fees incurred on appeal because Respondent's arguments were substantially frivolous and groundless.[61] More expansively, the court of appeals found that "[Respondent's] actions leading up to and during the [small claims court] hearing are wholly inconsistent with an understanding that a settlement had been reached."[62] The court of appeals remanded the case to the district court to determine and award attorney's fees and costs.[63]

The court of appeals also affirmed Judge Buchanan's order awarding fees.[64] The appellate court remanded the matter to the district court to award GHP and Pietrowski attorney's fees incurred in responding to Respondent's motion to strike their answer and opening brief and to dismiss their cross-appeal on the grounds that GHP had filed articles of dissolution.[65] The court of appeals found Respondent's motion to strike the pleadings and to dismiss the cross-appeal to be frivolous, as Respondent cited no authority to support her position, which the appellate court found to be contrary to well-established statutory law.[66]

The district court set a hearing on attorney's fees and costs for September 13, 2019.[67] On October 31, 2019, Judge Buchanan awarded GHP and Pietrowski a total of $22,169.00 in

[59] Ex. 5 at 696.
[60] Ex. S13 at 786 ¶ 39.
[61] Ex. S13 at 789 ¶¶ 48-49.
[62] Ex. S13 at 785 ¶ 37.
[63] Ex. S13 at 780 ¶ 51.
[64] Ex. S12.
[65] Ex. S12 at 815 ¶ 51.
[66] Ex. S12 at 813 ¶ 46.
[67] Ex. 6 at Ex. A at 375.

fees and costs incurred on appeal, including $21,546.00 in attorney's fees.[68] Judge Buchanan also granted Respondent's bill of costs on appeal, awarding her a total of $1,515.00.[69]

As of the date of the disciplinary hearing, Bohn said, the litigation remained ongoing as to the satisfaction of the judgment, with Respondent owing $600.00 in principal and interest.[70] Bohn testified that Respondent recently filed a motion to vacate the district court's judgment and, approximately one month before the hearing, a motion to compel judgment against Bohn and Aguilar for the amount that she paid them in the case. The case file reflects that eight days before the disciplinary hearing, on December 27, 2022, Respondent filed a motion to modify an order that entered in October 2022.

*Respondent Threatens to Grieve Non-Party Counsel*

Just over one week before the district court hearing on attorney's fees and costs on September 13, 2019, Respondent subpoenaed lawyer Blake Callaway to appear at the hearing.[71] Callaway, who had previously worked with GHP but was not involved in any litigation with Respondent, moved to quash the subpoena.[72] Judge Buchanan quashed Respondent's subpoena and granted Callaway's request for attorney's fees and costs incurred in preparing Callaway's motion, finding that "[the subpoena] imposes an undue burden on Mr. Callaway and his presence in court is wholly immaterial to the issues and outcome of the hearing."[73] In a separate order, Judge Buchanan granted Callaway's motion for attorney's fees and awarded Callaway $1,000.00 in fees and costs.[74]

Charles E. Fuller, who works with Callaway at Senn Visciano Canges PC, filed on Callaway's behalf the motion to quash and the related motion for attorney's fees. At the disciplinary hearing, Fuller testified that Respondent appealed the order awarding Callaway's fees and costs. Fuller also represented Callaway in the appeal. While that appeal was pending, Fuller recalled, Respondent sent an email addressed to him and to Callaway alleging that Fuller misrepresented material facts in the motion to quash. Respondent wrote, "You have until 5:00 PM today (August 7, 2020) to file with the District Court a retraction, apology, correction, and acknowledgement. If you fail to take corrective action, I will file a complaint with OARC about you and Mr. Calloway re these Rule 8.4 issues . . . ."[75] Respondent also demanded documentation related to GHP's articles of dissolution, which

[68] Ex. S14 at 397-98.
[69] Ex. S14 at 398.
[70] *See also* Ex. 5 at 667-68; Ex. 10.
[71] Ex. 6 at Ex. A at 375.
[72] *See generally* Ex. 6.
[73] Ex. 7 at 382.
[74] Ex. 9 at 390; *see also* Ex. 8.
[75] Ex. 23 at 400.

Callaway had filed.[76] Fuller denied making any misrepresentations in the motion to quash and directed Respondent to contact Bohn with any questions regarding GHP.[77]

*Respondent Litigates on Behalf of New GHP*

In spring 2019, Respondent began asserting legal rights on behalf of the newly formed "GHP Horwath, P.C." On May 8, 2019, Respondent emailed Bohn and demanded that he "send payment of the attorneys' fees reimbursement [Bohn] received on behalf of the company in November 2018 to my attention at the address below."[78] Respondent made the demand "[o]n behalf of GHP Horwath."[79]

Later, when the parties litigated the attorney's fees and costs incurred in the two court of appeals cases, Respondent again emailed Bohn on behalf of the new GHP: "You are not authorized to represent or [sic] GHP Horwath P.C. in any way in any action. You need to withdraw as counsel for GHP Horwath immediately, and withdraw your filing for bill of costs."[80]

On July 17, 2019, Respondent filed a new lawsuit, this time in Jefferson County District Court,[81] on behalf of the new GHP ("the Jefferson County case").[82] Respondent filed the lawsuit against Bohn and his law partner, Armando Aguilar, personally, and against their law firm, Bohn Aguilar LLC. Respondent included the following allegations in her complaint:

> 11. On December 29, 2017, a judgment was entered in favor of Plaintiff in the amount of $18,473.86, for an award of attorneys' fees and costs to be paid to Plaintiff.
>
> 12. As of April 25, 2018, Defendants were no longer authorized to represent Plaintiff in any litigation, or to act as legal counsel on behalf of Plaintiff.
> . . .
> 14. On November 19, 2018, Defendants received a check in the amount of $18,387.54 as payment on a judgment entered in favor of Plaintiff for attorneys' fees and costs in connection with case number 2016CV32258.
> . . .
> 16. Defendants knew that payment should have been paid to Plaintiff as reimbursement of fees and costs Plaintiff previously paid to Defendants.

[76] *See* Ex. 23 at 400; Ex. 11 at 172.
[77] Ex. 23 at 399.
[78] Ex. 13.
[79] Ex. 13.
[80] Ex. 14.
[81] Ex. S15.
[82] Jefferson County District Court case number 19CV31103.

> 17. As of the date of this Complaint, despite demand, Defendants have failed and refused to refund to Plaintiff any part of the $20,337.05 they have received on behalf of Plaintiff since May 9, 2018.
>
> 18. Since May 9, 2018, Defendants have knowingly obtained and exercised control over the $20,337.05 they received on behalf of Plaintiff as payment on the judgment, without authorization of the Plaintiff.
>
> 19. Defendants received the payments, concealed receipt of the payments from Plaintiff, and have exercised control over the judgment proceeds in the total amount of $20,337.05 with the intent to permanently deprive Plaintiff of the use or benefit of this thing of value.
>
> 20. Defendants are not legally entitled to keep any part of the $20,337.05, all of which is owed to and owned by Plaintiff. . . .[83]

Bohn, on behalf of the defendants, immediately moved to disqualify Respondent, arguing that GHP never retained Respondent, who never represented GHP in any matter; that Respondent was falsely holding herself out as GHP's counsel; and that Respondent's purported representation of the same entity to which she had been and continued to be directly adverse in litigation created an actual conflict of interest.[84] Bohn attached to his motion copies of Respondent's complaint against GHP and Pietrowski in the Denver District Court case; a copy of the check Respondent tendered to Bohn on November 16, 2018, satisfying the judgment in that case; the Court of Appeals opinions; and Pietrowski's affidavit.[85]

At the disciplinary hearing, Respondent testified that the new GHP never conducted any business and conceded that the allegations in the complaint were true "in name only." When asked whether she represented the GHP that dissolved in April 2018, Respondent avoided a direct answer, eventually stating that she did not represent GHP before it dissolved but did represent the new GHP. She explained that when she learned that GHP had dissolved, she suspected that Bohn no longer represented GHP and had improperly retained the payments she made satisfying the Denver District Court judgment. Through the lawsuit, she said, she sought to expose the alleged fraud. "I tried to get Attorney Regulation Counsel to do something [about Bohn's alleged fraud] and I shouldn't have stepped into that role," she said. In August 2019, Respondent moved to voluntarily dismiss the Jefferson County case, which the court dismissed without prejudice.[86]

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[83] Ex. S15 at 233-34.
[84] Ex. S16 at 1302.
[85] Ex. S16 at 1300-02.
[86] Ex. 15 at 766.

*Respondent Contacts Bohn's Clients and Threatens to Grieve Bohn*

In March 2020 Respondent phoned Pietrowski directly and asked her if she was interested in settling the Denver District Court case. Respondent also asked if Bohn Aguilar represented her. Pietrowski confirmed that Bohn Aguilar was counsel for her and GHP in the case. Pietrowski testified that Respondent then asked if a dissolved entity could be involved in litigation. Pietrowski reported feeling "very flustered" but "collected herself" and ended the call.

Pietrowski immediately called Bohn, who emailed Respondent and cautioned her against having any further contact with Pietrowski or GHP. Respondent replied, "I am the plaintiff, not counsel for Plaintiff. Parties are always allowed to talk to each other . . . . Ms. Pietrowski took my call voluntarily and spoke with me voluntarily."[87] On June 17, 2020, Respondent acknowledged in a filing in the Denver District Court case that Respondent spoke with Pietrowski on March 17, 2020, "to ask if she was interested in settling this matter."[88] The next day, in a motion filed in the Colorado Court of Appeals for limited remand and stay of the briefing schedule, Respondent wrote that Pietrowski "expressed surprised [sic] to hear that *any* litigation was ongoing with respect to GHP. . . . Ms. Pietrowski said she thought GHP would be interested [in settlement]. . . . Ms. Pietrowski said she would set up a phone call with [GHP representatives and Respondent] to discuss a resolution . . . ."[89] Respondent acknowledged at the disciplinary hearing that she should not have contacted Pietrowski, adding that she relied on incorrect advice that she received from counsel in a separate matter.[90]

On July 20, 2020, Respondent emailed Bohn, stating, "[Y]our client said they wanted to discuss a final resolution and you never followed your client's wishes."[91] Respondent also admonished Bohn for not responding to her attempts to confer regarding upcoming C.R.C.P. 69 proceedings. "You have an affirmative duty to confer and communicate," she wrote, adding, "I will report you to OARC unless you respond to my attempts to confer with you . . . by 2:30 PM today."[92] According to Bohn, Respondent sought to compel him to agree to confidentiality provisions relating to a pending motion for a protective order.

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[87] Ex. 17 at 239.

[88] Ex. S18 at 950 ("Plaintiff's Notice of Intent to File a Response to Defendants' Motion for Substitute Service").

[89] Ex. S19 at 245-46. Pietrowski denied that she told Respondent that she was unaware of the litigation or that she would bring the matter to GHP representatives.

[90] *See also* Ex. 16 at 20 (Respondent's response to the People's request for investigation, dated February 10, 2021, stating, "In what she now understands to be an impermissible contact, [Respondent] did speak directly to Nadine Pietrowski in March of 2020.").

[91] Ex. 21 at 267. Respondent sent the email to Bohn and to Aguilar but addressed only Bohn in the message.

[92] Ex. 21 at 267.

Following her email, Respondent sent two checks directly to GHP in late July 2020. On check number 2417, Respondent provided no information as to the purpose of the check.[93] On check number 2412, Respondent wrote "2016CV032258 Nina Kazazian" in the memo line.[94] Bohn testified that he had not authorized Respondent to send any payments directly to GHP. He was suspicious of Respondent's motives for sending checks directly to his client, as he viewed the checks as Respondent's effort to again directly communicate with his client about the pending litigation.

Respondent emailed Bohn on August 5, 2020, asking why the two checks had not been cashed.[95] Bohn replied that day, demanding that Respondent send all communications and checks for his clients to him.[96] Respondent asked Bohn for a written statement from GHP stating that Bohn was authorized to receive funds on its behalf. She also requested information about the dissolved GHP's assets.[97] On August 6, 2020, Respondent again emailed Bohn, warning him that if he did not provide the information she requested by 10:00 a.m. the next day, she would "ask the OARC to investigate your misrepresentations to the District court [sic] and the Court of Appeals, and your conduct in this action since April 27, 2018."[98] Bohn did not respond.[99]

**The Atrium Matters**

The Atrium Condominium Association ("Atrium") is a Colorado homeowners' association ("HOA"). In 2015, Atrium filed a judicial foreclosure action in Denver District Court. Atrium filed the action because a unit owned by NHK Investments ("NHK") failed to pay HOA dues.

Lawyer Wendy Weigler represented Atrium in the matter. At the disciplinary hearing, Weigler stated that the judicial foreclosure was filed against NHK as the mortgage holder and against Respondent personally as the owner of a second mortgage on the unit. Weigler said that Respondent began representing NHK a few months into the litigation. Though "it was clear" to Weigler that Respondent represented NHK, Weigler "never really [knew] who was the owner or principal of NHK Investments." Respondent represented herself pro se in the case.

At the disciplinary hearing, Weigler recounted that the parties attended a full-day mediation on May 2, 2017, resulting in a settlement agreement. Weigler described the

[93] Ex. 18.
[94] Ex. 19.
[95] Ex. 22 at 365.
[96] Ex. 22 at 364.
[97] Ex. 22 at 363.
[98] Ex. 22 at 362.
[99] At the hearing, Bohn testified that he did not understand Respondent's reference to misrepresentations to the district court and the court of appeals.

general terms of the agreement: that NHK would sell the unit within six months; that Atrium would receive an initial payment due within thirty days of the mediation and another payment after the unit sold; and that if the initial payment was not made or if the unit did not sell within six months, then NHK and Respondent would confess an order and decree of foreclosure.[100] The settlement agreement also included a release of claims against the parties and their agents,[101] a provision that allowed NHK or Respondent to "rescind [the] agreement without penalty at any time up until 5:00 pm on May 3, 2017, Mountain Daylight Time,"[102] and a clause deeming the agreement to be specifically enforceable in the absence of a more formal settlement agreement or unless Respondent or NHK rescinded the agreement.[103]

The parties signed the settlement agreement on May 2, 2017, with Respondent signing the agreement on behalf of herself and "as atty for" NHK.[104] Respondent began emailing Weigler about the agreement that night.[105] The next morning, Respondent called Weigler to discuss some changes to the agreement.[106] After the call, Weigler telephoned Howard Buchalter, a lawyer who had entered a limited appearance on behalf of NHK and Respondent to help settle the case. Weigler and Buchalter discussed Respondent's request, and Weigler followed up with Buchalter in an email documenting their discussion. In the email, Weigler recited the proposed changes to the agreement and wrote, "Let me know if these additions/revisions will work."[107]

On May 3, 2017, five minutes before the deadline to rescind expired, Respondent faxed Weigler, stating, "I need to run this by NHK Investments. . . . This is acceptable to me but I can't answer for NHK Investments. . . . NHK Investments rescinds the terms of the draft from mediation last night."[108] Referencing Weigler's recitation of the changes discussed with Buchalter, Respondent continued, "Please present the terms with the language below so we can get this done."[109]

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[100] *See also* Ex. 24 ¶¶ 1-2, 5.
[101] Ex. 24 ¶ 7.
[102] Ex. 24 ¶ 6.
[103] Ex. 24 ¶ 8.
[104] Ex. 24 at 1276.
[105] Ex. 25.
[106] *See* Ex. 26 (email to Weigler dated May 3, 2017, stating, "During our phone conversation from 11:31 to 12:15 PM today (which was recorded), we discussed the language of Paragraph 5 and I asked you to remove the 6-month sale requirement or propose another solution to address the problem that the requirement is not within the control of NHK Investments. . . .").
[107] Ex. 27.
[108] Ex. 28.
[109] Ex. 28.

On the morning of May 4, 2017, Respondent again emailed Weigler, stating, "I am now authorized to say that the revisions you proposed below are acceptable to both of the Defendants. Please hand write or type these changes on the document from Mediation and we will initial the changes and reaffirm the settlement."[110] That morning, Weigler sent Respondent a draft of the agreement the parties had signed on May 2, 2017, with the changes Respondent had accepted in redline.[111] Respondent and Weigler continued exchanging emails during the two hours that followed, with Weigler accepting Respondent's request to add a no admission of guilt or liability clause and agreeing to work on a draft of the final document once Respondent returned a signed and initialed copy of the revised agreement.[112] Late that afternoon, Respondent emailed Weigler, stating, "I will get this to you tonight . . . ."[113]

According to Weigler, Respondent did not return a signed and initialed copy of the revised agreement. Instead, Respondent emailed Weigler that evening and asked her to send the proposed foreclosure decree.[114] Respondent added, "on a professional level it really bothers me that you told the HOA that you thought I engaged in criminal conduct. That's really been damaging in terms of the financial ramifications of this situation. What do you suggest or what are you willing to offer/do to rectify that situation?"[115] Weigler did not understand Respondent's reference to criminal conduct.[116] Regardless, she reminded Respondent that the agreement included mutual releases and expressed her concern that Respondent was attempting to alter the agreement.[117] Weigler had not prepared the foreclosure decree and was leaving town the next day, so she offered to discuss the decree language with Respondent when the parties later prepared the final agreement.[118] Respondent replied fifteen minutes later, stating only, "I'm not waiving my claims against you[.]"[119]

Weigler testified that at that point she knew that Respondent would not return the signed agreement. Weigler researched whether the parties had a binding agreement, concluded they had, and began drafting a motion to enforce the settlement agreement. She filed the motion with the court on May 9, 2017.[120]

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[110] Ex. 29 at 1264. Respondent's email incorporates Weigler's email to Buchalter dated May 3, 2017. Ex. 29 at 1265.
[111] Ex. 30.
[112] Ex. 31.
[113] Ex. 32.
[114] Ex. 33 at 1404.
[115] Ex. 33 at 1404.
[116] *See also* Ex. 33 at 1403.
[117] Ex. 33 at 1403.
[118] Ex. 33 at 1403.
[119] Ex. 33 at 1403.
[120] Ex. S20.

Respondent responded to Weigler's motion on May 14, 2017, objecting on grounds that the discussions of May 4, 2017, were merely negotiations that did not result in an agreement.[121] Following a hearing on the matter on May 25, 2017, Weigler said, Judge Edward Bronfin issued a bench ruling that an enforceable settlement had been reached as of Respondent's email of the morning of May 4, 2017, accepting Weigler's proposed revisions on behalf of herself and NHK and stating that she and NHK would reaffirm the settlement.[122] Though Judge Bronfin gave the parties time to file a formalized agreement, Weigler said, the parties did not do so.

On July 6, 2017, Atrium moved for attorney's fees incurred between May 4 and the hearing on May 25, 2017, arguing that Respondent's and NHK's opposition to the settlement agreement was substantially frivolous and groundless.[123] Judge Bronfin awarded fees to Atrium on September 13, 2017, concluding that Respondent's position that the parties had not reached an agreement was substantially groundless and frivolous.[124] Judge Bronfin found that Respondent's "attempted repudiation of the Final Settlement Agreement, and the arguments advanced in support of that position, were not supported by any rational argument based on the law or the evidence . . . ."[125] Judge Bronfin also found:

> [Respondent] clearly and unequivocally accepted the modified terms on May 3, 2017 on her own behalf by communicating: 'This is acceptable to me. . . .' There was never any rescission of the May 2, 2017 Settlement Agreement or Final Settlement Agreement by [Respondent], individually, and the argument to the contrary was frivolous.
>
> Although the May 2, 2017 Settlement Agreement was initially rescinded on behalf of NHK, it was later reaffirmed on May 4, 2017, along with the modifications, in clear and unequivocal terms: "I am now authorized to say that the revisions you proposed below *are acceptable to both of the Defendants*. Please hand write or type these changes on the document from Mediation [the May 2, 2017 Settlement Agreement] and we will initial the changes *and reaffirm the settlement*." (Emphasis added). . . . In the face of these undisputed communications and with this documentation,

[121] Ex. S21 at 1411.

[122] *See generally* Ex. S23 ("Entry of Final Judgment and Order on Pending Motions" in case number 15CV32907 (Sept. 13, 2017)).

[123] Ex. S22 at 525-26. Atrium also moved for attorney's fees incurred between May 25 and June 15, 2017, alleging that Respondent and NHK failed to negotiate in good faith to formalize a settlement agreement and engaged in conduct that was substantially vexatious. Ex. S22 at 526.

[124] Ex. S23 at 615. The district court denied Atrium's request for attorney's fees incurred after May 25, 2017, because it did not receive evidence of the parties' communications about drafting a more formal settlement agreement. Ex. S23 at 619.

[125] Ex. S23 at 616.

> [Respondent's and NHK's] argument that there was not a "meeting of the minds" with regard to the Final Settlement Agreement was frivolous.
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> . . .
>
> [T]he May 2, 2017 Settlement Agreement *specifically* envisioned the possibility the parties might be unable to agree on the wording of a final settlement agreement and provided in ¶ 8: "the parties shall reduce this agreement to a more formal settlement agreement within fourteen days. However, in the absence of such further documentation, *the parties specifically intend for this agreement to be specifically enforceable, unless rescinded by* [Respondent or NHK]. (Emphasis added). In the face of this express language, [Respondent's and NHK's] arguments were frivolous that the lack of agreement on the language of the final settlement agreement and/or foreclosure decree meant that there had not been an agreement on the essential terms of the contract, or otherwise somehow vitiated the settlement.[126]

On November 1, 2018, the Colorado Court of Appeals unanimously affirmed Judge Bronfin's order finding an enforceable agreement between Atrium, Respondent, and NHK, concluding that "the record evidence, viewed objectively, shows that [Respondent's and NHK's] outward manifestations of assent support the finding that the parties formed a contract."[127] The appellate court did not address Judge Bronfin's award of attorney's fees in Atrium's favor.[128] The court of appeals denied Atrium's request for attorney's fees as a sanction against frivolous appeals under C.A.R. 38 because "[a]lthough [Respondent's and NHK's] arguments are in part unsupported by legal argument or authorities, we don't view their entire appeal as frivolous under the standard required by C.A.R. 38(b)."[129]

*Respondent's Ongoing Involvement in Litigation with Atrium, GHP, and Bohn*

Weigler testified that while Respondent's appeal of Judge Bronfin's order was pending, Respondent initiated on behalf of NHK a lawsuit in Jefferson County District Court against several parties including Atrium, Weigler's previous law firm and law partner, and Weigler personally, alleging breach of fiduciary duty and conspiracy to violate the Colorado Common Interest Ownership Act. Weigler said that Respondent voluntarily dismissed that action without prejudice and filed a second lawsuit against the defendants in 2019, alleging the same claims.[130] Jefferson County District Court Judge Russell Klein dismissed NHK's claims against the individual lawyers, Weigler said, and the case continued against Atrium.[131]

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[126] Ex. S23 at 616-18.

[127] Ex. S24 at 602-03 ¶ 26.

[128] The record before the Hearing Board is not clear as to whether either party appealed Judge Bronfin's award of attorney's fees.

[129] Ex. S24 at 609 ¶ 39.

[130] Jefferson County District Court case number 19CV31784.

[131] Weigler added that she withdrew as Atrium's counsel after Respondent filed the 2019 action.

Bohn testified that in 2021 Respondent subpoenaed him and GHP in the 2019 Atrium case. Bohn successfully moved to quash both subpoenas, arguing that neither he nor GHP had any facts relevant to the litigation against Atrium and that the subpoena was a backdoor effort to obtain privileged information between Bohn and GHP related to the Denver District Court case.[132] Judge Klein awarded attorney's fees to GHP, finding that the subpoena was frivolous, vexatious, and unnecessarily expanded the litigation, and that Respondent had acted in bad faith when she issued the subpoena and defended the motion to quash.[133] Bohn said that his efforts to collect the judgment on that award remain ongoing.[134]

## III. RULE VIOLATIONS

### Colo. RPC 3.1 (Claim I)

The People's first claim alleges that Respondent violated Colo. RPC 3.1, which states in relevant part, "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." An objective standard is used to determine whether a lawyer's position is frivolous.[135]

The People allege that Respondent asserted frivolous claims in the Denver District Court case and in the Jefferson County case. The People also allege that Respondent frivolously defended the Atrium matter. We consider each case in turn.

*Respondent's Claim for Breach of Contract in the Denver District Court Case*

The People first contend that the breach of contract claim that Respondent brought in the Denver District Court case was frivolous for three reasons: she did not execute and return the settlement agreement, she explicitly rejected the settlement offer, and she rejected the offer by making a counteroffer. Respondent counters that because she subjectively believed she and GHP had entered into the agreement, her claim was not frivolous.

Because "[t]he existence of a contract is an element to a breach of contract case,"[136] we briefly turn to rudimentary contract law to assess the People's claim. A contract is

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[132] Exs. S25-S26. Judge Bronfin concluded that Atrium had over-disclosed witnesses in its initial disclosures, including Bohn and GHP. Ex. S25 at 1372; Ex. S26 at 1378.
[133] Ex. S26 at 1383-84.
[134] *See also* Ex. 40 ("Non-Party/Judgment Creditor GHP Horwath, P.C.'s EMERGENCY Motion for Substitute Service" filed on September 23, 2022).
[135] *In re Olsen*, 2014 CO 42, ¶20
[136] *See Long v. Cordain*, 2014 COA 177, ¶ 18 (citing *W. Distrib. Co. v. Diodosio*, 841 P.2d 1053, 1058 (Colo. 1992)).

formed when there is an offer, acceptance, and consideration that supports the agreement.[137] "An offer is a manifestation by one party of a willingness to enter into a bargain."[138] Acceptance is "words or conduct that, when objectively viewed, manifests an intent to accept the offer."[139] "When an offer is rejected it ceases to exist and thereafter cannot be accepted."[140] A response that modifies the original offer is not acceptance of the offer but a counteroffer, which rejects the original offer.[141]

With these standards in mind, we find overwhelming evidence that Respondent and GHP never entered into a settlement agreement in the small claims attorney's fee dispute. Respondent failed to execute and return the agreement to Bohn via email by the first deadline of midnight on the night of May 19, 2015, or by the extended deadline of noon on May 20, 2015. Instead, Respondent emailed the executed agreement to Bohn on May 23, 2015, after the hearing on fees took place and the court entered its judgment. Further, before the second deadline elapsed, Respondent explicitly rejected the offer, writing to Bohn that the terms of the agreement were not acceptable. Finally, Respondent emailed Bohn on the afternoon of May 20, 2015, with a counteroffer that contained materially different terms of settlement, thus rejecting Bohn's offer a third time. The parties do not dispute that GHP never accepted Respondent's counteroffer. These facts, when objectively viewed, obviously show that Respondent failed to manifest an intent to accept the offer and, therefore, that the parties never reached an agreement to settle.

The Hearing Board's independent conclusions are bolstered by the findings of the courts in the civil matters underlying this disciplinary case. Though we are not bound by those findings, we find self-evident the rationale set forth by Judge Buchanan and by the Colorado Court of Appeals when they concluded that Respondent never entered into a settlement agreement with GHP and Pietrowski.[142]

At the disciplinary hearing, Respondent described the backstory to her dispute with Bohn but struggled to provide a cogent justification for bringing a breach of contract claim against GHP. She was not able to credibly offer good faith arguments on the merits of her

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[137] *Marquardt v. Perry*, 200 P.3d 1126, 1129 (Colo. App. 2008).
[138] *Indus. Prods. Int'l, Inc. v. Emo Trans, Inc.*, 962 P.2d 983, 988 (Colo. App. 1997).
[139] *Scoular Co. v. Denney*, 151 P.3d 615, 619 (Colo. App. 2006).
[140] *Baldwin v. Peters, Writer & Christensen*, 349 P.2d 146, 147 (Colo. 1960).
[141] *Id.* at 148.
[142] The preponderance of the evidence standard in the civil matters underlying this disciplinary case is less rigorous than the clear and convincing standard we use here, which is proof "that the truth of the contention is highly probable." *People v. Distel*, 759 P.2d 654, 661 (Colo. 1988) (citations and quotations omitted). Nonetheless, we find persuasive the analyses set forth in the opinions from the district court and the appellate court assessing Respondent's breach of contract claim. *See also People v. Fitzgibbons*, 909 P.2d 1098, 1104 (Colo. 1996) (finding the conclusions of the district court and the court of appeals were evidence that the lawyer's claims were frivolous and groundless).

position, including, for instance, why she proceeded to the hearing on May 23, 2015, if she believed that the parties had entered into a settlement agreement. Indeed, we adjudge her explanations for the lawsuit, which largely fall into three categories, as implausible and inconsistent with her actions.

First, Respondent stated that her "interpretation of the agreement was that it was not intended to resolve GHP's attorney's fees claims against [her]" and that "the document didn't do what it needed to do if the real intent was to not go to hearing." Yet she conceded that she "just didn't see" the offer's fourth recital affirming that the agreement would resolve the parties' claims for attorney's fees. "I thought I had a reasonable explanation," Respondent said, adding, "my interpretation was just wrong. It's unexplainable."

Second, Respondent testified that she did not see GHP's proposed joint stipulation to dismiss the case attached to Bohn's email with the settlement offer; this is why, she said, she believed that the hearing would proceed on May 23, 2015, even though she claims she "accept[ed]" the settlement offer. But we do not find her testimony credible in light of the evidence showing that she took no steps to inform the small claims court of the purported settlement. Further, her testimony is inconsistent with her email to Bohn on May 23, 2016, in which she attached the executed agreement and stated that the original had been mailed because the agreement included a signed copy of the joint stipulation.

Third, Respondent appeared to attribute her subjective belief that the parties had entered into an agreement to the combative relationship she had with Bohn. She testified that she had questions about the offer but that Bohn and Aguilar would not return her calls. As a result, she said, she became "panicked [and] scared after years of threats from Bohn." But Respondent never explained the causal link between her purported state of mind in the days leading up to the hearing and the breach of contract claim that she later brought against GHP. Rather, she simply stated at the hearing that she was "certain that [she] had a rational argument, which is why [she] took [the case] to the appellate court"—only to then acknowledge that "in retrospect, it was a mistake." But Judge Buchanan's order on summary judgment detailed the ways that Respondent's argument conflicted with elementary contract law and described how Respondent's actions evinced a lack of intent to be bound by a contract. Moreover, Judge Buchanan's order of attorney's fees against Respondent laid bare the facts that discredited her purported belief that an agreement had been struck and that she had brought her claim in good faith. Yet Respondent doubled down on her position by appealing the unfavorable rulings. We thus cannot conclude that Respondent's frivolous litigation against GHP and Pietrowski was a mere mistake. Rather, she waged in bad faith a committed campaign that lingered in litigation over the payment of judgments against her, morphed into new litigation against Bohn, and encroached on wholly unrelated lawsuits that she brought against other parties.

In sum, the evidence is clear that Respondent did not accept GHP's settlement offer. Respondent failed to articulate any colorable argument that an agreement existed between the parties or to credibly support her reasons for litigating the action. We thus find that her

claim for breach of the settlement agreement in the Denver District Court case had no basis in law and fact and thus was frivolous, violating Colo. RPC 3.1.

*Respondent's Defense in the Atrium Matter*

The People also argue that Respondent asserted a frivolous defense in the Atrium matter. Specifically, they claim that because Respondent explicitly agreed to the terms of the settlement for herself and on NHK's behalf, her later protestations to the contrary were frivolous. Though a close call, we find that the evidence that Respondent asserted a frivolous defense in the Atrium matter falls short of clear and convincing.

We agree with Judge Bronfin and the court of appeals that Respondent entered into the settlement agreement with Atrium personally and on behalf of NHK while communicating with Weigler on May 3-4, 2017. At the hearing, however, Respondent articulated a number of cogent arguments for her position that the parties had failed to enter a settlement agreement. She contended that because NHK had rescinded the agreement of May 2, 2017, she and Weigler renegotiated the entire agreement in piecemeal fashion and never arrived at a final agreement. Respondent also asserted that because the language of the decree of foreclosure was an essential term, the parties could not reach a formal agreement until they finalized the language of the decree. Though Judge Bronfin deemed these arguments frivolous, the court of appeals declined to find Respondent's position wholly frivolous. In our view, the evidence, taken as a whole, does not satisfy the heavy burden of clearly and convincingly demonstrating that Respondent asserted a frivolous defense in the Atrium matter.

*Respondent's Complaint in the Jefferson County Case*

Finally, the People allege that Respondent's complaint against Bohn Aguilar on behalf of the newly incorporated GHP was frivolous. We agree.

At the hearing, Respondent would not commit to the factual basis she set forth in the complaint, talking around a direct answer as to whether the new GHP had received a fees reimbursement in November 2018 or if the new GHP had ever retained Bohn Aguilar. Respondent eventually acknowledged that the allegations listing GHP were only "true on the basis that the name of the corporation was the same."[143] Ultimately, Respondent conceded that the lawsuit had no merit, stating, "I don't think really there is a rational explanation" for bringing the action. She called the lawsuit a "huge mistake" and noted that she voluntarily withdrew the complaint after she "came to her senses." But Respondent also claimed, incongruously, to have a good-faith basis for the complaint; she described her unfounded suspicions that Bohn Aguilar had defrauded GHP by failing to forward to GHP the

[143] *See also* "Respondent's Submission Regarding Hearing Briefs," Ex. A at 5 (Sept. 21, 2022) (stating in her hearing brief filed on December 29, 2021, that "[w]hile technical, the facts alleged in the complaint [in *GHP Horwath, P.C. v. Bohn Aguilar, LLC*] are true . . . .").

fees that she had paid. She posited that "maybe if I expose [Bohn then the litigation] would stop."

Respondent offered no evidence to support her supposition that Bohn defrauded GHP, however. More importantly, Respondent failed to set forth a colorable basis for misleadingly suggesting that Bohn Aguilar had ever represented the new GHP or for falsely asserting that a judgment had entered in favor of the new GHP in December 2017, that Bohn Aguilar had collected money that should have gone to the new GHP, or that Bohn Aguilar owed money to the new GHP.[144] To the extent that Respondent argues that she had a legal basis to step into GHP's shoes and sue on its behalf because she incorporated an entity with the same name, she did not point to—nor can we find—legal authority to support that position. We thus have no difficulty concluding that Respondent's complaint in the Jefferson County case was not grounded in law and fact and was thus frivolous in violation of Colo. RPC 3.1.

Colo. RPC 3.3(a)(1) (Claim II)

The People bring their second claim under Colo. RPC 3.3(a)(1), which provides that "[a] lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Failure to make a disclosure can be the "equivalent of an affirmative misrepresentation."[145]

The People contend that Respondent knowingly made false statements of material fact to the Jefferson County District Court while suing Bohn Aguilar on behalf of the new GHP, as Bohn Aguilar had no prior dealings with the new GHP and had never owed the new GHP funds.

We conclude that Respondent violated this rule, relying on the same rationale as set forth above. In her complaint, Respondent falsely represented that a judgment was entered in favor of the new GHP; that Bohn Aguilar was no longer authorized to represent the new GHP in any litigation; that Bohn Aguilar received a check as payment on a judgment entered in favor of the new GHP; that Bohn Aguilar should have forwarded that check to the new GHP; that Bohn Aguilar refused to return any part of those funds to the new GHP; and that Bohn Aguilar had intended to permanently deprive the new GHP of the funds. Further, Respondent conflated GHP, the dissolved entity, with the new GHP by concealing the entities' very different origins and ownership structures. In so doing, Respondent

[144] *See, e.g., Sterns Mgmt. Co. v. Missouri River Servs., Inc.*, 70 P.3d 629, 632-33 (Colo. App. 2003) (stating that a lawyer filing a pleading has a duty under C.R.C.P. 11 to make "a reasonable inquiry into the facts and the law . . . [and] reasonably believe that the pleading is well grounded in fact [and that] the legal theory asserted in the pleading must be based on existing legal principles or a good faith argument for the modification of existing law . . . .").
[145] Colo. RPC 3.3 cmt. 3.

deceptively advanced litigation under the name of the new GHP as though it were the dissolved entity. We find that Respondent undertook these actions knowingly: she spoke of her ulterior motive to expose the fraud she suspected Bohn was committing in the Denver District Court case. Moreover, she acknowledged that she never represented the dissolved GHP and that the allegations in the complaint were true "in name only."

Colo. RPC 4.2 (Claim III)

The People's third claim is premised on Colo. RPC 4.2, which provides that when representing a client, "a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter," unless the lawyer has the consent of the other lawyer or is authorized to engage in the communication by law or a court order.

According to the People, Respondent violated this rule when she called Pietrowski to discuss settlement related to the Denver District Court case and again when she sent partial payments directly to GHP. At the hearing, Respondent defended her actions by observing that Pietrowski voluntarily accepted her call and that she contacted Pietrowski to discuss settling a judgment rather than settling active litigation. Even so, Respondent acknowledged that she should not have contacted Pietrowski.

We have no trouble finding that Respondent contacted Pietrowski on March 17, 2020, impermissibly drawing her into a conversation about a legal issue, even though Respondent knew Bohn represented Pietrowski in the matter. Respondent acknowledges she did so. Though Respondent contends that the subject matter of the call concerned settling a judgment, the rule's plain language prohibits a lawyer from communicating with a represented party "concerning the matter to which the communication relates."[146] Nowhere in the rule or its interpretive comments is there an exception for discussions about settling a judgment; likewise, neither the rule nor the comments limit their reach only to communications about active litigation. The parties do not dispute that Bohn never consented to the contact. And Respondent's assertion that Pietrowski voluntarily accepted the call—an assertion that Pietrowski contests—is patently immaterial.[147] We thus find that Respondent violated Colo. RPC 4.2.[148]

[146] Colo. RPC 4.2 cmt. 2.

[147] *See* Colo. 4.2 cmt. 3 ("The Rule applies even though the represented person . . . consents to the communication.").

[148] We also reject Respondent's assertion that she could speak with Pietrowski because Respondent was acting as a pro se party. *See* Colo. Bar Ass'n Ethics Op. No. 133 at 3 (Oct. 17, 2017) ("Absent a court order to the contrary, a lawyer who is representing himself or herself in a legal matter may not communicate about the matter directly with a represented adverse party without the consent of the adverse party's lawyer.").

We are not convinced that Respondent breached Colo. RPC 4.2 when she sent two checks directly to GHP in late July 2020, however. No clear or convincing evidence demonstrates that Respondent sent the checks for the purpose of communicating about the litigation rather than for merely making payments on the outstanding judgment. Indeed, that Respondent harbored suspicions that Bohn was not providing her payments to GHP was a prevalent theme in her testimony, which casts doubt that she intended the checks as a method of communicating with GHP. We thus decline to find that Respondent violated Colo. RPC 4.2 by sending checks to GHP.

Colo. RPC 4.5(a) (Claim IV)

In their fourth claim, the People allege that Respondent violated Colo. RPC 4.5(a), which forbids lawyers to threaten "criminal, administrative or disciplinary charges to obtain an advantage in a civil matter" or to presenting or participate in presenting "criminal, administrative or disciplinary charges solely to obtain an advantage in a civil matter." According to the People, Respondent violated Colo. RPC 4.5(a) thrice: (1) on July 20, 2020, when she told Bohn that she would grieve him unless he responded to her conferral attempts; (2) on August 6, 2020, when she warned Bohn that she would request a disciplinary investigation if he did not produce documents from GHP regarding his representation and how the entity handles assets; and (3) on August 7, 2020, when she demanded that Fuller file a retraction in the GHP litigation or face a disciplinary grievance.

We find that Respondent threatened disciplinary action against Bohn and Fuller as the People allege. Respondent does not dispute that on July 20, 2020, she threatened Bohn, with disciplinary action if he did not respond to her attempts to confer. She also does not dispute telling Bohn on August 6, 2020, that she would grieve him if he did not produce the information from GHP that she had demanded. Respondent contends that the communications did not violate Colo. RPC 4.5(a), however, as "there was no advantage to be gained" from them. But Bohn credibly testified that Respondent sought in the first email to obtain his agreement concerning a pending motion for a protective order. As to Respondent's threat on August 6, 2020, the emails reflect that she sought GHP's corporate records after Bohn demanded that she stop sending payments on the judgment in the Denver District Court case directly to his client. In both instances, we find that Respondent attempted to leverage the threat of a grievance to coerce Bohn's action in the case, undermining the disciplinary process in violation of Colo. RPC 4.5(a).[149]

We likewise conclude that Respondent's threat to grieve Fuller if he did not file a retraction in the GHP Denver District Court case subverted the disciplinary process. Fuller testified that Respondent emailed him and his client, Callaway, writing that she would report Fuller to disciplinary authorities if he did not retract factual statements he made in the motion to quash the subpoena on Callaway. We find that Respondent, who sent the email

[149] *See* Colo. RPC 4.5(a) cmt. 2 ("[t]hreatening to use . . . [the] disciplinary process to coerce adjustment of private civil matters is a subversion of that process . . . .").

amidst her appeal of Callaway's attorney's fees award for the motion to quash, sought to improve her odds of a favorable outcome in the appeal by discrediting Callaway's underlying motion.[150] Based on this undisputed evidence, we find that Respondent intended to gain an advantage in the appeal through her ultimatum to Fuller, violating Colo. RPC 4.5(a).[151]

Colo. RPC 8.4(c) (Claim V)

Next, the People claim that in three respects Respondent violated Colo. RPC 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. First, they characterize as deceitful Respondent's attempts to terminate Bohn as GHP's counsel and recover money she paid toward a judgment in GHP's favor by incorporating a new GHP, making demands on its behalf, and suing on its behalf. They reason that Respondent acted dishonestly because she knew that Bohn Aguilar did not owe money to the new GHP and because Bohn Aguilar did not represent the new GHP. Second, the People argue that Respondent's conduct in obtaining GHP's signed proposed settlement, rejecting it, and then attempting to enforce it after she failed to improve on the settlement at hearing were dishonest. Third, the People contend that Respondent's argument that a settlement had not been reached in the Atrium case was dishonest because Respondent agreed to the proposed terms on behalf of herself and NHK Investments.

We are convinced that GHP had no relation to the new "GHP Horwath, P.C." Respondent incorporated in November 2018. The new GHP was never Bohn's client, and Bohn never collected funds meant for the new GHP. We thus find that Respondent's email to Bohn in May 2019 "[o]n behalf of GHP Horwath" demanding payment of the funds that he received in November 2018 was chicanery.[152] We also find that Respondent acted dishonestly in June 2019 when she told Bohn that he was "not authorized to represent GHP Horwath P.C.," directed him to withdraw as GHP's counsel, and insisted that he withdraw the bill of costs he had filed on GHP's behalf.[153] Though the statement that Bohn was not authorized to represent GHP Horwath, P.C., was true as regards the entity Respondent incorporated, that entity never retained Bohn, and Bohn never submitted any filings on its behalf. Moreover, because Respondent acknowledged that GHP and the new GHP were the same "in name only," and because the new GHP was a creature of Respondent's creation

[150] Respondent did not address her email to Fuller and Callaway during her testimony.

[151] At the hearing, Respondent noted that she contacted disciplinary authorities concerning an email she received from another lawyer in a separate matter that purportedly contained a threat to grieve her. Respondent stated that the representative told her that a lawyer may permissibly inform another lawyer that the lawyer's conduct violates the Rules of Professional Conduct. We do not find Respondent's testimony relevant to the People's allegations, however, because Respondent went beyond merely informing Bohn and Fuller that their conduct might violate the Rules, conditioning her threats of disciplinary action on their acquiescence to her demands.

[152] Ex. 13.

[153] Ex. 14.

and had no prior dealings with Bohn, we find that Respondent knew that Bohn did not owe money to the new GHP and had never represented the new GHP. We thus find that Respondent knowingly violated Colo. RPC 8.4(c) when she sent the emails to Bohn.

For the same reasons, we agree with the People that Respondent's lawsuit in the Jefferson County case was dishonest. Among her allegations, Respondent asserted that judgment entered in favor of the new GHP in December 2017 for fees and costs paid to Bohn Aguilar, that Bohn Aguilar received funds to satisfy that judgment and other payments meant for the new GHP, and that those funds were owed to the new GHP. But these statements were true for GHP and false for the new GHP. Further, Respondent alleged that Bohn Aguilar was not authorized to represent the new GHP as of April 2018, but Bohn Aguilar never represented the new GHP. Here again, we find that Respondent acted knowingly when she made the false statements, as she understood that GHP and the new GHP were the same "in name only" and knew that no relationship ever existed between Bohn Aguilar and the new GHP.[154] We thus find that Respondent's conduct violated Colo. RPC 8.4(c).

The People next allege that Respondent acted dishonestly when she obtained the settlement agreement signed by Pietrowksi, rejected it, and then attempted to enforce it following the hearing on attorney's fees in Denver County small claims court on May 23, 2015. We consider this allegation to contain two separate pieces—first, Respondent's decision to obtain the agreement, and second, Respondent's attempt to enforce it. As to the first, aside from Bohn's suspicions, we heard no evidence that Respondent *obtained* the signed copy of the agreement with the intent to use it as an insurance policy against an unfavorable ruling at the hearing on attorney's fees.[155] Moreover, that theory is contradicted by evidence that Respondent made a counteroffer after she received the signed offer; had GHP accepted the counteroffer, the signed copy of the offer would have been useless. As to the second, however, the evidence is clear and convincing that Respondent dishonestly attempted to enforce the rejected settlement agreement following the hearing on attorney's fees; we find this behavior was dishonest because she knew that the parties had not entered into an agreement.

As regards the Atrium matter, the People did not present clear and convincing evidence that Respondent acted dishonestly when she denied that the parties had reached a settlement. As we have noted, Respondent articulated several plausible bases for believing that the parties had not finalized the settlement agreement, and very little evidence cast doubt on her sincerity on that score. Instead, Respondent testified that she believed she

[154] At the hearing, Respondent attempted to rationalize her belief in the veracity of her claims by asserting that the claims resulted from a "legal formulistic process." We find this explanation wholly incredible.

[155] For instance, in her email to Bohn following the hearing on May 23, 2015, Respondent did not state when she placed the fully executed agreement in the mail, and Bohn said that he never received the mailed agreement.

was negotiating a new agreement on a term-by-term basis and that Weigler went "radio silent" during the negotiations until May 9, 2017, when Weigler moved to enforce the agreement. The emails Respondent exchanged with Weigler from May 2-4, 2017, support that account. Thus, we do not find by clear and convincing evidence that Respondent violated Colo. RPC 8.4(c) by dishonestly claiming that the parties failed to reach an agreement.[156]

Colo. RPC 8.4(d) (Claim VI)

The People's final claim alleges that Respondent violated Colo. RPC 8.4(d) by engaging in conduct that is prejudicial to the administration of justice. The People argue that Respondent's frivolous and dishonest filings consumed significant time and resources from the courts and the parties.

The People have proved this claim by clear and convincing evidence. Respondent's frivolous action against GHP and Pietrowski for breach of contract has been a significant drain on party and judicial resources. As of November 2020, the record of actions in the Denver District Court case spanned eighty-one pages.[157] At the disciplinary hearing, Bohn reported that the litigation to collect GHP's October 2019 judgment in that case continues to this day. Aguilar, who maintains the billing records for Bohn Aguilar, stated that the law firm billed GHP $271,858.11 between August 2013 and November 2021 for litigation with Respondent. That figure has grown, he said, and now stands at approximately $375,000.00, from which the law firm has been paid approximately $340,000.00. Aguilar noted that only about $14,000.00 of that billing figure resulted from the initial small claims litigation. He added that the law firm recently billed fifty-four hours responding to four motions Respondent filed in three separate venues in October 2022 alone, following her transfer to disability inactive status.

At the hearing, Respondent acknowledged that she should not have filed the Denver District Court case but couched blame on Bohn's aggressive tactics for the unremitting litigation. She lamented that Bohn would not resolve the case despite her "countless attempts to settle."[158] She reported feeling like a "caged animal" in the litigation, adding that killing herself seems like the only way out of the case. Respondent also alleged the Bohn capitalized on the litigation to turn GHP into a cash cow for his law firm.

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[156] Though we do not find misconduct proved by clear and convincing evidence as to the Atrium matter, we are deeply disturbed by Respondent's conduct in that case, including her dealings with Weigler.

[157] *See generally* Ex. 5.

[158] Respondent did not adduce any evidence of her attempts to settle the Denver District Court case, save for her impermissible communications with Pietrowski and one email pushing for a global resolution. That email, which is dated September 15, 2022, was drafted while this proceeding was pending. Ex. 39 at 2-3.

Bohn disputed Respondent's narrative, pointing out that she initiated each case against him and his clients. "We cannot walk away" from her complaints and motions, he said, adding, "I am not the aggressor." He also claimed that "[Respondent] has harassed us to the ends of the earth. . . . This is paper terrorism."[159]

Both Bohn and Aguilar pointed out that the billing figures are spread out over nine years of litigation and that the law firm has operated at a loss on Respondent's matters because it does not bill GHP for all of the time they spend on the litigation.

We find that the testimony, record of actions, and billing ledgers support Bohn's testimony. We also find Judge Klein's order quashing the GHP subpoena in the 2019 Atrium case to be informative here. In that order, Judge Klein noted that "the purpose of [Respondent's] Subpoena was an effort to expand the dispute between NHK/[Respondent] and GHP/Bohn from the Denver District Court and other proceedings to this case."[160] Judge Klein continued:

> The Court finds that the Subpoena was issued for improper purposes, was frivolous, vexatious, and unnecessarily expanded the scope of these proceedings . . . in that the Subpoena lacked substantial justification and constituted an abuse of discovery. The Court . . . finds that NHK and [Respondent] had notice that the information sought was not relevant . . ., that NHK and [Respondent] issued the Subpoena in bad faith and defended the Motion in bad faith, and that the issues of the Subpoena had no determinative outcome on any party's claims or defenses . . . .[161]

Judge Klein's account of Respondent's attempt to expand the dispute with GHP and Bohn into the 2019 Atrium case buttresses our finding that Respondent's frivolous action against GHP and Pietrowski is a continuing drain on court and party resources.

Turning to the frivolous Jefferson County case, the record of actions in that matter reflects that the parties submitted thirty filings in the one month the case was active, needlessly wasting judicial resources.[162] In addition, Bohn testified that Respondent voluntarily dismissed her complaint only after he incurred the time and expense involved in moving to disqualify her.

In sum, Respondent's frivolous breach of contract lawsuit and frivolous action against Bohn Aguilar needlessly consumed party and judicial resources, even spilling over

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[159] Aguilar used a more visceral metaphor to describe Respondent's litigation, stating that it was "like walking into a buzz saw."
[160] Ex. S26 at 1383.
[161] Ex. S26 at 1383.
[162] Ex. 15.

into unrelated litigation. For these reasons, we find that Respondent prejudicing the administration of justice in violation of Colo. RPC 8.4(d).[163]

## IV. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[164] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[165] When imposing a sanction after a finding of lawyer misconduct, the Hearing Board must consider the duty the lawyer 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 the Hearing Board may then adjust based on aggravating and mitigating factors.

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

*Duty*: Respondent violated several duties she owed to the legal system. Her false statements about the new GHP in her complaint against Bohn Aguilar violated her duty of candor to courts when she made false statements and misrepresentations to a tribunal. She violated her duty to uphold the legal process when she asserted frivolous claims in the action against Bohn Aguilar and in the Denver District Court case. And she violated her duty not to engage in improper communications with individuals in the legal system when she contacted Pietrowski about settling the Denver District Court case. Finally, Respondent violated duties that she owed as a professional by dishonestly claiming that she accepted GHP's settlement offer and by attempting to enforce the purported agreement. She violated the same duties by alleging that Bohn Aguilar had any prior dealings with the new GHP.

*Mental State*: In the Denver District Court case, Respondent acted knowingly when she falsely claimed that she accepted GHP's settlement offer. We thus find that she knew that her case to enforce the reputed settlement agreement was frivolous. We also find that Respondent initiated the case with the intent of benefitting herself by obtaining more money through the settlement than the small claims court had awarded her. We find that Respondent acted knowingly when she threatened to grieve Bohn and Fuller if they did not accede to her demands, and that she acted knowingly when she called Pietrowski and discussed settling the case.

As to the Jefferson County case, we conclude that Respondent misrepresented material facts concerning Bohn Aguilar and the new GHP with the intent to deceive the Jefferson County District Court in order to recoup the money she had paid on the judgments in the Denver District Court case and to further her own efforts to obtain information about

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[163] *See Olsen*, ¶ 23 (upholding a finding that a lawyer violated Colo. RPC 8.4(d) by bringing frivolous motions and thus wasting judicial resources).
[164] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).
[165] *See In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).

Bohn Aguilar's representation of GHP. We also find that she knew that her lawsuit was frivolous.

Because Respondent acted knowingly when she filed the frivolous complaints in the Denver District Court case and the Jefferson County case, we also find that her conduct prejudicing the administration of justice was knowing.

*Injury*: Respondent's frivolous and dishonest breach of contract lawsuit has caused GHP serious financial harm of at least $350,000.00 in attorney's fees. What began as a small claims case worth $7,500.00 has, due to Respondent's misconduct, ballooned over nine years into litigation costing GHP almost fifty times that much. So, too, did Respondent's "paper terrorism" campaigns harm Bohn and Aguilar, as their firm has become enmeshed in interminable litigation for which they do not fully bill their client.

Respondent's dishonest conduct seriously undermined the reputation of the legal profession and the integrity of the legal system because "[i]f lawyers are dishonest, then there is a perception that the system, too, must be dishonest."[166] Likewise, her frivolous lawsuits caused the legal system serious actual harm; the Denver District Court case against GHP has lingered for over six years. In contrast, we find that Respondent caused the legal system potential harm but no actual harm by threatening to grieve Bohn and Fuller, as her threats did not affect the underlying litigation. Similarly, Respondent's impermissible contact with Pietrowski appeared to have no influence on the Denver District Court case, though Pietrowski testified that she was flustered by Respondent's phone call.

**ABA *Standards* 4.0-8.0 – Presumptive Sanction**

The presumptive sanction for Respondent's violations of Colo. RPC 3.3(a)(1) and Colo. RPC 8.4(c) in the Jefferson County case is set by ABA *Standard* 6.11, which calls for disbarment when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, thereby seriously or potentially seriously injuring a party or causing a significant or potentially significant adverse effect on the legal proceeding. We find that ABA *Standard* 6.11 also sets the presumptive sanction of disbarment for Respondent's violation of Colo. RPC 8.4(c) in the Denver District Court case.

[166] *In re Pautler*, 47 P.3d 1175, 1179 (Colo. 2002); *see also In re Cleaver-Bascombe*, 986 A.2d 1191, 1200 (D.C. 2010) ("Lawyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is 'basic' to the practice of law. . . . Every lawyer has a duty to foster respect for the law, and any act by a lawyer which shows disrespect for the law tarnishes the entire profession.") (citations omitted); *Lawyer Disciplinary Bd. v. Grindo*, 842 S.E.2d 683, 695 (W. Va. 2020) ("Respect for our profession is diminished with every deceitful act of a lawyer.") (citations and quotations omitted).

Further, Respondent's filing of frivolous lawsuits in contravention of Colo. RPC 3.1 and Colo. RPC 8.4(d) implicates ABA *Standard* 6.21, which calls for disbarment when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

Respondent's threats of disciplinary charges to obtain an advantage in a civil matter, violating Colo. RPC 4.5(a), warrants a presumptive sanction of suspension under ABA *Standard* 7.2, which applies when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, causing the public or the legal system injury or potential injury.

Finally, under ABA *Standard* 6.32, the presumptive sanction for Respondent's violation of Colo. RPC 4.2 is suspension, which is appropriate when a lawyer communicates with an individual in the legal system when the lawyer knows that the communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.

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

Aggravating circumstances include any considerations that justify an increase in the degree of the sanction to be imposed, while mitigating factors warrant a reduction in the severity of the sanction.[167] As explained below, we apply five factors in aggravation, assigning substantial weight to three, and one factor in mitigation, according it minimal weight.

Aggravating Factors

*Dishonest or Selfish Motive – 9.22(b)*: As discussed above, Respondent dishonestly brought her lawsuit in the Jefferson County case on false premises. And she dishonestly claimed in the Denver District Court case that she had accepted GHP's settlement offer.

We find that Respondent also acted with a selfish motive in both matters. In the Denver District Court case, Respondent sought to improve on the small claim court's judgment of $2,360.00 in her favor by enforcing the settlement agreement for $10,000.00. In the Jefferson County case, Respondent sought to recoup money that she paid to Bohn Aguilar to satisfy the judgment against her in the Denver District Court case. Moreover, Respondent acted selfishly when she twice threatened to grieve Bohn to gain an advantage in litigation. Respondent's ultimatum to Fuller was likewise selfishly motivated. Finally, we find that Respondent acted selfishly when she contacted Pietrowski because she sought to make an end-run around Bohn to secure a more favorable settlement than she would have obtained with his involvement.

[167] *See* ABA *Standards* 9.21 and 9.31.

Because Respondent engaged in a broad array of dishonest or selfish conduct, and because her most serious misconduct was motivated by both dishonest and selfish motives, we accord this factor substantial weight.

*Pattern of Misconduct – 9.22(c)*: Respondent filed two frivolous lawsuits that included repeated misrepresentations of material fact to the Denver District Court and the Jefferson County District Court. She then appealed the decisions in those cases repeatedly, contrary to all truth and reason. Moreover, Respondent thrice threatened opposing parties with disciplinary action in attempts to gain tactical advantage in litigation. We thus have no trouble finding that Respondent engaged in a pattern of misconduct, and we weigh this factor heavily.

*Multiple Offenses – 9.22(d)*: Respondent's misconduct in this case ranged wide, encompassing violations of six Rules of Professional Conduct in the Denver District Court and Jefferson County cases. In each matter, Respondent violated rules prohibiting dishonesty, frivolous claims, and conduct prejudicial to the administration of justice. In the Denver District Court case, Respondent also violated rules against improper communications with represented parties and subverting the disciplinary process. Finally, in the Jefferson County case, Respondent misrepresented material facts to the court. We therefore apply this factor and accord it substantial weight.

*Bad Faith Obstruction of the Disciplinary Proceeding by Intentionally Failing to Comply with Rules or Orders of the Disciplinary Agency – 9.22(e)*: The People urge us to apply this factor, claiming that Respondent refused to provide them access to her medical records to support her claims that mental and emotional problems affected her conduct; that she refused to authenticate documents during her deposition; that she refused to answer discovery related to matters in which she was both lawyer and client on the basis of privilege and work product; and that she relied on her conflict with Bohn to deflect from answering the People's inquiries. But we are not convinced that Respondent litigated her disciplinary case in bad faith. We decline to infer bad faith where Respondent may have been seeking to protect client confidences or privileged information, or where Respondent may have acted on the advice of counsel. We thus do not apply this factor but note that some facts the People cite are appropriately applied when considering other aggravating factors.

*Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g)*: Respondent qualified her statements accepting responsibility for her misconduct to such a degree that we find they amount to a refusal to acknowledge her misconduct. For instance, we observed that Respondent minimized her culpability for contacting Pietrowski and for threatening to grieve Fuller and Bohn, alleging in the first instance that she acted on advice from prior counsel in a separate matter, and claiming in the second instance that she relied on information obtained from the People.

More striking, however, was Respondent's refusal to accept the effect the litigation has had on the other parties and opposing counsel in her cases. When asked whether any of the other parties in the various district court cases and appeals have been harmed, Respondent answered, "Litigation is harmful for parties; I suppose from that perspective, yes. . . . But I don't know how to evaluate to what extent and how to apportion blame. But I'm willing to take responsibility for my part in it." Though Respondent conceded that she filed the lawsuit against GHP and Pietrowski, she distanced herself from the litigation that followed, stating that she is not responsible that it continues even to this day, despite clear evidence that she persists in filing motions in the case. As to the lawsuit Respondent filed in the Jefferson County case, Respondent employed doublespeak; though she conceded that no rational basis existed to bring the litigation, she also insisted that her allegations were technically true. And most shockingly, when asked whether her conduct harmed opposing counsel, Respondent immediately answered "No," adding later that because the lawyers had been paid they had not been harmed. But that callous viewpoint takes no account of the emotional toll Bohn and Aguilar described in fending off Respondent's years-long litigation campaigns.

Because Respondent's statements accepting responsibility for her misconduct ring hollow, as evidenced by her obvious lack of concern about the effect her conduct has had on others, we apply this factor and accord it average weight.

*Substantial Experience in the Practice of Law – 9.22(i)*: Respondent has been licensed to practice law in Colorado for over three decades. She testified to her experience in civil litigation in state and federal courts. She has practiced in state courts in Colorado and New York, and in federal districts across the country.[168] Given Respondent's extensive legal experience, we find that applying this factor is warranted and accord it average weight.

Mitigating Factors

*Absence of a Prior Disciplinary Record – 9.32(a)*: We acknowledge that Respondent has not been disciplined in the three decades that she has practiced law. But we find that this factor is attenuated because her misconduct in this case began in 2015. We thus accord this factor only minimal weight.

*Absence of a Dishonest of Selfish Motive – 9.32(b)*: In her hearing brief, Respondent asks that we apply this factor. As discussed above, we find that Respondent acted with dishonest and selfish motives. We thus decline to apply this mitigating factor.

*Personal or Emotional Problems – 9.32(c)*: Respondent asks us to apply this factor in mitigation, stating that she has experienced ongoing emotional and financial problems following her abusive marriage and rancorous divorce. Respondent testified that her

[168] *See* Ex. 16 at 3 (Respondent's response to the People's request for investigation, dated February 10, 2021).

contentious history with Bohn, his personal attacks and name calling,[169] and his appearance at her hearings in other litigation matters triggered the feelings of abuse and trauma she experienced during her distressing marriage and divorce.[170] "I'm concerned about my state of mind with this Bohn stuff; everything that we're here for is really related to Michael Bohn," she said.

The Hearing Board sympathizes with Respondent's account of her traumatic experience but is unable to apply this factor because she offered no evidence whatsoever regarding her struggles with mental or emotional health aside from her own self-serving testimony. Respondent submitted no medical notes to corroborate her testimony, nor did she offer witness testimony attesting to her condition or behavior during any period of her misconduct. And aside from Respondent's assertion that the litigation against Bohn re-traumatized her, Respondent failed to causally link the emotional and personal problems she described at the hearing to her misconduct. We also note that Respondent, not Bohn, has initiated all of the lawsuits leading to her misconduct in this case. Because Respondent did not present evidence to support her claim of personal or emotional problems or evidence linking her condition to her misconduct, we do not apply this factor.

*Cooperation with Disciplinary Proceedings – 9.32(e)*: In her hearing brief, Respondent asks that we apply this factor. We decline to do so, given that she failed to produce medical documents relevant to her defense and refused to authenticate at her deposition any documents that the People had obtained from Bohn.[171]

*Mental Disability – 9.32(i)*: As relevant to this case, this factor may be applied in cases when: (1) medical evidence shows that the respondent is affected by a mental disability; (2) the mental disability caused the misconduct; (3) the respondent's recovery from the mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (4) the recovery arrested the misconduct, so recurrence of that misconduct is unlikely.

At the hearing, Respondent testified that following her divorce in 2011 she was diagnosed with depression and post-traumatic stress disorder and received medicated psychiatric treatment. She stated that she stopped her active legal practice and received

[169] Though Respondent did not offer evidence beyond her testimony that Bohn engaged in name-calling, we note that the Colorado Court of Appeals admonished Bohn and Respondent in an appeal of the Denver District Court case, writing, "[I]n their briefs, the parties use pejorative language with respect to one another. This is neither helpful nor appropriate." Ex. S12 at 794 ¶ 4 n.1.

[170] *See* Ex. K (Trans. 15:3-7; 16:17-22) (transcript of hearing held November 16, 2018, wherein Judge Buchanan admonished Bohn that he should cease to attend hearings in Respondent's other cases).

[171] *See* Ex. 37 at 10, 29-31.

disability benefits.[172] In 2014, Respondent said, her treating physician "cleared" her to resume practicing law. Respondent testified that she is currently in therapy and has experienced significant relief from her symptoms since last February.

We sincerely applaud Respondent's efforts to seek help when she has needed it. Even so, we find that she has not met the criteria required to apply this factor. Crucially, Respondent did not introduce any medical evidence to corroborate her testimony about her diagnoses or treatment. Nor did she produce medical records during discovery to support a claim of mental disability.[173] As to the second prong, we heard no evidence aside from Respondent's testimony that her alleged mental disability caused her misconduct. Rather, Respondent stated that she was medically "cleared" to resume the practice of law in 2014. As a result, we struggle to connect her alleged medical condition to the misconduct that began in 2015 and persisted through at least 2019. Respondent's showing as to the third prong fares no better: the absence of records or other medical evidence renders us unable to determine if she has experienced a meaningful and sustained period of successful rehabilitation. Finally, we did not hear convincing evidence that recurrence of Respondent's misconduct is unlikely. To the contrary, while this disciplinary proceeding was pending, Judge Klein found that Respondent served a frivolous subpoena on GHP and argued against Bohn's motion to quash in bad faith. Further, we are alarmed that Respondent filed numerous pleadings as a pro se party after her transfer to disability inactive status on September 29, 2022. Because we do not find that Respondent suffered a mental disability that mitigated her conduct, we decline to apply this factor.

*Imposition of other penalties or sanctions – 9.32(k)*: Despite evidence that multiple courts have assessed attorney's fees against Respondent for her frivolous filings, we do not apply this factor because Respondent has not been penalized for her dishonesty, which we adjudge to be her most egregious conduct.

*Remorse – 9.32(l)*: Respondent asks us to find that she is remorseful for her conduct. She stated that she "regretted deeply" bringing the breach of contract action against GHP and Pietrowski. She also testified that she made a "bad choice" to incorporate the new GHP in order to file a lawsuit against Bohn Aguilar on its behalf. These claims of remorse, however, are belied by the manifold explanations and justifications Respondent had at the ready. Respondent also contends that her commitment to satisfy the judgments against her is evidence of her remorse and her willingness to own her actions. But her argument is undercut by evidence showing that she continues to litigate the judgments levied against her. Overall, Respondent's limited and qualified expressions of remorse left us unconvinced of her sincerity. We thus decline to apply this factor.

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[172] Respondent clarified that she was not on disability inactive status from the practice of law at that time.

[173] *See* Ex. 35 at 7 ¶ 1 (Respondent's response to a request for production, objecting to the production of medical records).

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

The Hearing Board heeds the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[174] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases.'"[175] Though prior cases can inform through analogy, the Hearing Board is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.[176] We take into account that in cases involving multiple types of lawyer misconduct, the ABA *Standards* recommend that the ultimate sanction should be at least consistent with, and generally greater than, the sanction for the most serious disciplinary violation.[177]

The People press for disbarment. Respondent does not advocate for a specific sanction but argues that her misconduct was negligent because she was not acting rationally during the underlying litigation. Thus, as best we can determine, Respondent appears to contend that the appropriate sanction, if any, is public censure.

Case law points us to disbarment when we consider Respondent's dishonesty, which is the gravamen of her misconduct. Colorado cases provide that absent significant mitigating factors, a lawyer's material misrepresentations to a tribunal should typically yield disbarment. In *People v. Calt*, for instance, the Colorado Supreme Court accepted a hearing panel's recommendation to disbar a lawyer who helped his client defraud the client's employer.[178] The lawyer prepared a fake statement of settlement concerning a fictitious real estate transaction, which the client then used to obtain reimbursement for relocation costs from the employer; the lawyer accepted the bulk of the proceeds from the scam.[179] The Colorado Supreme Court found that the lawyer's conduct warranted disbarment, even though the lawyer had no prior discipline.[180] In contrast, the lawyer *In re Cardwell* was suspended for three years, rather than disbarred, for misrepresenting to a trial court that his client had no other alcohol-related driving offenses.[181] The court relied on the lawyer's statement to sentence the lawyer's client as a first-time offender.[182] Despite the gravity of

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[174] *See In re Attorney F.*, 2012 CO 57, ¶ 20; *see also Fischer*, 89 P.3d at 822 (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).
[175] *Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[176] *Id.* ¶ 15.
[177] ABA *Annotated Standards* Preface at xx.
[178] 817 P.2d 969, 971 (Colo. 1991).
[179] *Id.*
[180] *Id.*
[181] 50 P.3d 897, 899 (Colo. 2002).
[182] *Id.*

the lawyer's misconduct, the hearing board adjusted the sanction downward based on the seven applicable mitigators, which significantly outweighed the two aggravators.[183]

Here, Respondent knowingly made misrepresentations and filed frivolous claims in Jefferson County case and the Denver District Court case. We specifically find that in both matters she engaged in the misconduct with the intent to deceive the district courts and to obtain a benefit for herself. In the Jefferson County case, Respondent knowingly asserted a frivolous lawsuit that contained false statements of material fact and knowingly withheld material information related to the origin of the new GHP and its lack of connection to GHP. Respondent intended to deceive the court to obtain money from Bohn Aguilar, threatening serious potential harm to Bohn Aguilar and the integrity of the legal proceeding. She withdrew the complaint only after Bohn Aguilar's response threatened to expose the rouse. In the Denver District Court case, Respondent similarly lodged frivolous claims with the intent to benefit herself: she planned to secure a more favorable payout than she obtained in small claims court by enforcing the non-existent settlement agreement. We have no doubt that Respondent's frivolous action caused GHP and Pietrowski serious injury, as GHP has been embroiled in the litigation since 2016 and has incurred over $350,000.00 in attorney's fees.

Considering Respondent's misconduct, her state of mind, and the injury she caused, we arrive at a presumptive sanction of disbarment. The last piece of our analysis—an adjustment of the presumptive sanction based on aggravating and mitigating factors, as mediated by case law—counsels in favor of ending where we began, with the presumptive sanction. As in *Calt*, the many heavily weighted aggravators in this case significantly overshadow the sole mitigator, rendering a deviation from the presumptive sanction of disbarment unwarranted.

This mechanical application of the ABA *Standards* leads us to conclude that disbarment is the appropriate sanction in this case. That conclusion is also undergirded, however, by our own sense of outrage that a lawyer would so abuse the litigation process that an opposing party in a small claims case would eventually be forced to spend more than one-third of a million dollars in attorney's fees to defend itself. Added to this is our disbelief that a lawyer would engage in the type of subterfuge at issue here, reconstituting a dissolved corporate entity to which she paid a judgment, just so she could purport to sue, on behalf of the entity, its former counsel to claw back the payments she had made. This varied, intentional, and pernicious misconduct leads us to conclude that we must impose the strongest sanction available to protect the integrity of the legal system and other litigants from any similar misconduct that Respondent may, in the future, engage in. Without hesitation we conclude that Respondent must be disbarred.

[183] *Id.* at 902.

## V. CONCLUSION

"A lawyer who engages in deceptive conduct in legal proceedings violates the most fundamental duty of an officer of the court."[184] When a lawyer makes false statements and misrepresentations to a tribunal, the lawyer violates the most fundamental duty of truth that the lawyer owes to the legal system.[185]

Because Respondent knowingly made false statements and misrepresentations in her own personal litigation in multiple fora, we conclude that her actions were deliberate tactical maneuvers that burdened the court system and harmed her opponents. Respondent's failure to recognize, or even evince an awareness of, the effect of her litigation on opposing parties, opposing counsel, and the courts, concerns us immensely. We recognize that disbarment is a drastic sanction; we do not reach this decision lightly. But given Respondent's history of litigating as a pro se party or on behalf of an entity under her control, however, we are concerned that even disbarment will fail to temper Respondent's litigation tactics and thus may be inadequate to protect the public and the legal system from her "paper terrorism." Because disbarment is the most aggressive step this Hearing Board can take to bring a halt to Respondent's abuse of the litigation process, however, we unhesitatingly exercise our discretion and impose that sanction to protect the public, the profession, and the legal system.

## VI. ORDER

The Hearing Board therefore **ORDERS:**

1. **NINA H. KAZAZIAN**, attorney registration number **21910**, is **DISBARRED** from the practice of law in Colorado. The disbarment will take effect upon issuance of an "Order and Notice of Disbarment."[186]

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

3. To the extent applicable, within fourteen days of issuance of the "Order and Notice of Disbarment," Respondent **SHALL** comply with C.R.C.P. 251.28(d), requiring a lawyer to file an affidavit with the PDJ setting forth pending

[184] ABA *Annotated Standards* at 310 (collecting cases).
[185] ABA *Annotated Standards* at 313 (collecting cases).
[186] In general, an order and notice of sanction will issue thirty-five days after a decision is entered under C.R.C.P. 251.19(b). In some instances, the order and notice may issue later than the thirty-five days by operation of C.R.C.P. 251.27(h), C.R.C.P. 59, or other applicable rules.

matters and attesting, *inter alia*, to notification of clients and other state and federal jurisdictions where the attorney is licensed.

4. The parties **MUST** file any posthearing motions **no later than Friday, March 17, 2023**. Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **no later than Friday, March 24, 2023**. Any response thereto **MUST** be filed within seven days.

6. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** submit a statement of costs **no later than Friday, March 17, 2023**. Any response challenging those costs **MUST** be filed within seven days.

DATED THIS 3rd DAY OF MARCH, 2023.

BRYON M. LARGE
PRESIDING DISCIPLINARY JUDGE

KATRIN M. ROTHGERY
HEARING BOARD MEMBER

MATTHEW K. HOBBS
HEARING BOARD MEMBER