People v. Angelique Layton. 22PDJ032. April 19, 2023.

A hearing board disbarred Angelique Layton (attorney registration number 36480), effective May 24, 2023.

In July 2020, Layton misrepresented to the court presiding over her client's dissolution of marriage case that she was working pro bono on her client's case. In fact, Layton was billing her client but had not collected payment for the representation.

In June 2021, Layton's law license was suspended in case number 19PDJ056 (consolidated with case number 20PDJ030). Even so, in October and November 2021, Layton guided her former client in the former client's bankruptcy proceeding—in which Layton had filed a claim for her unpaid attorney's fees—by sending the former client online articles discussing property law in Colorado. In addition, Layton sent an email to the bankruptcy trustee and the trustee's lawyer, copying Layton's former client, alleging that the opposing party in the dissolution case had filed a fraudulent claim in the bankruptcy matter. Layton and her former client would later assert the same position in both separate and joint filings in the bankruptcy case.

Meanwhile, Layton advocated for her former client's interests in a commercial property after Layton paid money on her former client's behalf in an effort to avoid foreclosure of the property. In October 2021, Layton sent a demand letter to the LLC that held a note secured by a deed of trust on the property. In that letter, Layton threatened legal action if the LLC did not accede to her former client's demand for a reimbursement of funds; demanded an accounting of rental payments collected under the note on which her former client had defaulted; and asserted that the LLC's effort to foreclose on her former client's debt violated the stay in the former client's bankruptcy case. In November 2021, after the LLC filed for judicial foreclosure of the property, Layton moved to intervene in the case and requested an emergency hearing regarding the appointment of the judicial receiver. In her filings, Layton asserted that her former client had not been properly served in the case, that the LLC failed to maintain the property during receivership, that her former client had the right to develop the property and to lease space in the property without interference, and that the foreclosure violated the stay in her former client's bankruptcy case. Layton also made the latter argument in two emails to the bankruptcy trustee's lawyer, again copying Layton's former client.

Through this conduct, Layton violated Colo. RPC 3.4(c) (a lawyer must not knowingly disobey an obligation under the rules of a tribunal); Colo. RPC 5.5(a)(1) (a lawyer must not practice law without a law license or other specific authorization); Colo. RPC 5.5(a)(2) (a lawyer must not practice law where doing so violates regulations of the legal profession); and Colo. RPC 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The case file is public per C.R.C.P. 242.41(a). Please see the full opinion below.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** ANGELIQUE LAYTON, #36480	Case Number: **22PDJ032**
OPINION IMPOSING SANCTIONS UNDER C.R.C.P. 242.31(a)	

While representing a client in a dissolution of marriage case, Angelique Layton ("Respondent") misrepresented to a tribunal that she was working on her client's case pro bono when in fact she was billing the client but had not collected payment for the representation. Later, after Respondent was suspended from the practice of law and no longer represented the client, Respondent engaged in the unauthorized practice of law. She did so by sending her former client legal resources related to the former client's bankruptcy case. Respondent advocated for the former client's interests in a commercial property after Respondent paid money on the former client's behalf in order to keep the property from foreclosure. Respondent also sent a letter demanding payment of a debt purportedly owed to her former client. Respondent's misconduct warrants disbarment.

I. PROCEDURAL HISTORY

On August 24, 2022, Erin R. Kristofco of the Office of Attorney Regulation Counsel ("the People") filed an amended complaint in this disciplinary matter alleging that Respondent violated three Rules of Professional Conduct: Colo. RPC 3.4(c) (Claim I); Colo. RPC 5.5(a)(1) and (2) (Claim II); and Colo. RPC 8.4(c) (Claim III).[1] Respondent answered the amended complaint on September 12, 2022. The Court denied the People's motion for partial summary judgment on Claims I and II on February 10, 2023.

From February 21 to 24, 2023, a Hearing Board comprising Presiding Disciplinary Judge Bryon M. Large ("the PDJ") and lawyers Thomas J. Overton and J.D. Snodgrass held a disciplinary hearing under C.R.C.P. 242.30. Kristofco represented the People, and Respondent appeared pro se. The Hearing Board received testimony from Respondent, Sara Toole, Mark Cohen, and

[1] The People initially charged two violations in their complaint filed on June 10, 2022. The Court granted the People's motion to amend their complaint on September 1, 2022.

Christopher Conant. The PDJ admitted the parties' stipulated exhibits S1-S42, the People's exhibits 1-15, and Respondent's exhibit AAL.[2]

II. FINDINGS OF FACT

Unless otherwise indicated, 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 July 12, 2005, under attorney registration number 36480.[3] She is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[4]

Respondent's Litigation on Behalf of Sara Toole

On June 18, 2021, Respondent was suspended from the practice of law in Colorado for a period of three years.[5] Before Respondent was suspended, she represented Sara Toole against Toole's former partner, Chris Mattair, in a partition matter and dissolution of marriage action.[6]

At the time Toole and Mattair's relationship ended, they owned, among other properties, a house on Ouray Street in Boulder. In September 2019, Mattair sought, through the partition case, to sever his interest in the Ouray house from Toole's interest.[7] While the partition action was pending, Respondent filed a petition for dissolution of marriage on Toole's behalf.[8] According to Mattair's lawyer, Mark Cohen, the petition for dissolution paused the partition action.[9]

---

[2] On March 3, 2023, the PDJ ordered Respondent to file electronic copies of her exhibits AAL and E. On March 6, 2023, Respondent emailed the PDJ's administrator, stating that Exhibit E was not admitted. After reviewing the record, the PDJ finds that Exhibit E was not admitted and **CORRECTS** the record to withdraw the portion of the order dated March 3, 2023, directing Respondent to file Exhibit E.

[3] Am. Compl. ¶ 1; Answer to Am. Compl. at 1 ¶ 1.

[4] C.R.C.P. 242.1(a)(1).

[5] *See* "Order and Notice of Suspension" in case number 19PDJ056, consolidated with case number 20PDJ030 (June 18, 2021).

[6] *See* Ex. 12 ¶ 2; Ex. 11 ¶¶ 9-10.

[7] Ex. 11 ¶ 9.

[8] Ex. 11 ¶ 10.

[9] Cohen testified that the falling out between Mattair and Toole led to other litigation. For instance, Cohen brought a forcible entry and detainer eviction action against tenants to whom Toole had rented the Ouray house without Mattair's consent. The court in that matter denied Respondent's attempt to enter her appearance on behalf of the tenants, Cohen said, because one of the tenants had not consented to the representation and a potential conflict could arise if Respondent were to represent both the tenants and Toole.

Respondent described the litigation surrounding the partition and dissolution cases as highly contentious, requiring more than 250 hours of her time.[10] She said that her work on the case, compounded by her anxiety over the emerging COVID-19 pandemic, exhausted her, and she attempted to find substitute counsel for Toole.[11] When that effort failed, Respondent said, she stayed on the case at Toole's entreaty.

Respondent Tells the Domestic Relations Court that She Represented Toole Pro Bono

Boulder County District Court Judge Patrick D. Butler ultimately dismissed Toole's dissolution petition with prejudice and ordered the parties to mediate the issue of Cohen's attorney's fees.[12] Mediation was scheduled for July 21, 2020, but neither Respondent nor Toole attended.[13] That night, Respondent submitted a filing explaining that she missed the mediator's email confirming the mediation date.[14] She wrote that "Ms. Toole is without money and is without a job and is currently homeless" and had not yet been approved for a waiver of the filing fee for mediation.[15] Respondent added:

> [Respondent] has been working pro bono on this case since October [2019]. She has worked many hours on this case without payment which is not an excuse but is an explanation for the fact that it has been difficult to keep up with the multiple angles of litigation and attorneys involved in this case and meet her own financial needs. . . ."[16]

But Respondent was not representing Toole pro bono—she was billing Toole at an hourly rate of $350.00,[17] logging almost 100 hours on the matter by late July 2020.[18]

---

[10] Respondent and Cohen each denounced the other's actions in the civil litigation. Respondent alleged that Cohen refused to meaningfully confer on matters and was unprofessional and disrespectful in his communications with her. Cohen returned the criticism, testifying that Respondent's failure to confer and her unprofessional communications unnecessarily prolonged the proceedings. Each claimed the other made false statements in pleadings. Cohen, who is the complaining witness in this case, acknowledged that he has filed four disciplinary complaints against Respondent since 2019.

[11] Ex. 1.

[12] Exs. S3-S4. Toole and Mattair were not officially married, and Respondent asserted that a common law marriage existed between them. *See* Ex. 12 ¶ 8; *see also* Ex. S42.

[13] Ex. S5.

[14] Ex. S41.

[15] Ex. S41 ¶¶ 1, 5.

[16] Ex. S41 ¶ 3. Respondent identified herself in the filing as "Angelique Layton Anderson."

[17] Ex. S9 at 5115 ¶ 5.A. Respondent identified herself in the agreement as "Angelique Layton Anderson."

[18] Ex. S9 at 5118-124. According to Respondent and Toole, Respondent's fees were to be paid from the proceeds of the sale of the Ouray house.

Respondent claimed at the disciplinary hearing that she used the term "pro bono" intending to describe that she had not been paid for her work on Toole's case. Respondent testified that she now believes her statement "was a mistake" and said that she was exhausted, overwhelmed, and ill when she wrote it. She also testified that she did not intend to represent that she was working on the case for free.[19] Respondent said that Judge Butler understood as much because he noted in an order entered on July 22, 2020, that Respondent "is working pro bono, or at least unpaid at this juncture" and commented that counsel could assert a lien on the properties at issue in the case to secure payment of their fees.[20] Judge Butler waived the mediation requirement and stated that the hearing on attorney's fees remained set for August 24, 2020.[21]

Toole Seeks Bankruptcy Protection

On July 24, 2020, one month before the hearing on Cohen's attorney's fees, Toole petitioned for bankruptcy protection in the U.S. Bankruptcy Court for the District of Colorado.[22] Toole's initial bankruptcy case was dismissed, and she refiled her petition on September 11, 2020, in case number 20-16095-MER.[23] David Lewis was appointed as trustee in Toole's case.[24]

According to Respondent, she advised Toole that "bankruptcy was inevitable" after Toole became unemployed during the litigation against Mattair.[25] From June through December 2020, Respondent billed Toole in at least two of the civil cases for work related to Toole's bankruptcy.[26] At the hearing, Toole testified that this time was a "dark period" in her life. She

[19] Respondent stated that when Toole signed Respondent's fee agreement, Toole had real estate but no liquid assets. Believing the case would quickly resolve, Respondent agreed to work without any upfront payment with the expectation that Toole would reimburse her for her fees from the anticipated sale of the Ouray house. *See also* Ex. AAL at 8.

[20] Ex. S42.

[21] Ex. S42.

[22] Ex. S7.

[23] *See* Ex. 11 at 4 ¶ 15; *see also* Ex. AAL at 10 ¶ 15 ("The [bankruptcy court] dismissed the initial filing, but then allowed Ms. Toole to refile . . . ."); Ex. S7 at 4-13.

[24] Ex. S16 at 1.

[25] Ex. 12 ¶ 23.

[26] Respondent's billing records in case number 20CV30365 reflect that she billed one hour on June 5, 2020, and one hour on July 4, 2020, to "discuss bankruptcy with [Toole]," two hours on July 27, 2020, to "review notice of bankruptcy and discuss filing with [Toole] and research and prepare affidavit," and one hour on July 29, 2020, to "review order notice of bankruptcy and discuss with [Toole]." Ex. S9 at 5125. Respondent's billing records in case number 19CV30866 reflect that she billed one-half-hour on July 27, 2020, to "review notice of bankruptcy and Exhibit A and discuss bankruptcy with [Toole]," three hours from September 15-20, 2020, to "discuss affidavit with [Toole], review case, prepare affidavit for bankruptcy," and one-half-hour on December 4, 2020, to "review order action taken and discuss with [Toole] regarding bankruptcy proceeding." Ex. S9 at 5128-29.

said that she was homeless with limited access to cash and recovering from the disintegration of her ten-year relationship with Mattair, who was "family."

In late August 2020, Respondent confronted Toole about paying her legal fees from the litigation against Mattair.[27] Toole asked Respondent for the billing invoice from the cases so that she could list Respondent as a creditor in the bankruptcy action.[28] On January 11, 2021, Respondent filed a claim in the bankruptcy case for the fees she billed Toole.[29] The billing statement Respondent included with her claim reflects that she sought $90,493.35 from the bankruptcy estate for 254.15 hours of work on Toole's cases at an hourly rate of $350.00, plus $1,290.85 in filing fees and a $250.00 mediation fee.[30] On February 17, 2021, two additional claims were entered under Respondent's name, each for $91,000.00.[31]

Cohen, on behalf of Chris Mattair and Chris's brother, David Mattair, objected to Respondent's three claims on July 5, 2022, asserting that Respondent was attempting to collect on fees for legal work that she previously claimed was pro bono, that Respondent's claims exceeded the reasonable value for the legal services she rendered to Toole, and that Respondent's claims were duplicative.[32] Respondent responded to the objection on August 8, 2022, stating that she "had intended the 'pro bono' statement to be interpreted as she has been working 'without payment' from Ms. Toole, not that she intended to work for free. . . . [Respondent] NEVER stated that she had agreed to work for Ms. Toole as a 'pro bono' attorney."[33] Respondent acknowledged during the bankruptcy proceeding that her two claims dated February 17, 2021, were duplicative.[34]

Respondent's Additional Litigation in Toole's Bankruptcy Case

In Toole's bankruptcy case, Chris Mattair claimed a sixty-six-percent interest in the Ouray house. The trustee in Toole's bankruptcy case, Lewis, and Lewis's lawyer, Mark Larson, challenged Mattair's claim, because records indicated that Mattair held a fifty-percent interest in

[27] Ex. S8.
[28] Ex. S8.
[29] Ex. S16 at 2.
[30] Ex. S9 at 5133. Respondent claimed 102.8 hours in the dissolution case; 59.3 hours in the partition action; 20 hours in the eviction action; 22.8 hours in a third case between Mattair and Toole (Boulder County District Court case number 20CV30365); and 49.24 hours spent on email communications.
[31] Ex. S16 at 4.
[32] Ex. 11 at 1-2. As the People allege in their amended complaint, Lewis, through counsel, filed a joinder of the Mattairs' objection on July 6, 2022. Ex. S24. The People did not present evidence about this allegation at the hearing, however, and Respondent testified that Lewis withdrew the objection.
[33] Ex. AAL at 7.
[34] At the hearing, Respondent testified that she did not intend to file the duplicative claims, which she believed the bankruptcy court clerk had entered in error. *See also* Ex. 11 ¶ 6; Ex. AAL ¶ 6.

the home as a tenant-in-common rather than a sixty-six-percent interest as a joint tenant with Toole.[35]

Respondent and Toole agreed with the trustee's position and were concerned that Chris Mattair, through Cohen, was taking a different position in the bankruptcy case than he had asserted in the partition matter against Toole.[36] On November 4, 2021, more than four months after Respondent's suspension took effect, Respondent wrote in an email to Larson, Lewis, and Toole, "[W]hen David and Chris redeeded the property to themselves when they filed the lawsuit with Sara [Toole], they clearly broke the joint tenancy."[37] Respondent then offered Larson emails from Cohen from the partition matter that Respondent claimed supported her argument, to be used for "impeachment if [C]ohen claims something different than the assertions he made in the [partition] complaint . . . ."[38] The next day, Respondent and Toole jointly filed in Toole's bankruptcy case a pleading titled "Rebuttal Claims and Joint Reply to Movant's Supplemental Reply."[39] The joint pleading, which contained a trove of information from the litigation between Mattair and Toole in which Respondent had been counsel, included the following arguments:

- The bankruptcy court should prevent [Chris Mattair] from asserting a greater claim than he acknowledged was his as part of the partition complaint filed in Boulder District Court in 2019.

- David Mattair paid nothing towards the maintenance or expenses of the Ouray property. He has characterized his "share" of the property both as a loan and as an ownership interest and has filed a claim as a creditor in this matter, despite the fact that his claim against the property is based solely on a ownership interest as created by the deed Mr. Christopher Mattair transferred to David Mattair in October, 2020, after Ms. Toole filed bankruptcy. Therefore, once the trustee distributes the proceeds of the sale of the Ouray house to Christopher and David Mattair according to their ownership interest, David Mattair's further claim against the bankruptcy estate should be dismissed.

- Mr. Mattair's and Ms. Toole's payments to the HELOC were made on a 50/50 basis indicating a 50/50 split on the HELOC debt. In this case, the course of conduct supports an equal share on this debt.

- After David Mattair deeded his interest to Chris Mattair in September of 2019, his share of equity was a moot point given that Chris Mattair assumed David Mattair's equity as part of his equity in this deed, giving him no more than a 50% share with no further agreements between Ms. Toole and David Mattair's interest after the tenancy was severed.

[35] *See* Ex. 8 at 1 (Larson's email to Respondent and Toole dated November 4, 2021).
[36] Ex. 8 at 2.
[37] Ex. 8 at 2.
[38] Ex. 8 at 2.
[39] Ex. S17.

- Mr. Mattair's attorney, Mark Cohen, wrote to [Respondent] in 2019 and conceded that it was never the intention of the Mattairs to have a joint tenancy in the first place, and that this was likely a mistake of the realtor or someone at the bank, which supports the fact that there was never an intention to have three equal 1/3 shares of equity. Chris Mattair needed funds for his 50% share of the down payment, and Chris Mattair was uncertain he could qualify for a mortgage given a prior short sale on his record, so David Mattair was placed on the mortgage alongside of Chris Mattair and Ms. Toole.[40]

At the hearing, Respondent testified, "I have no recollection about which parts [of the joint reply] I wrote and which parts Sara wrote. I did a whole bunch of this, Sara did some of it. We were agreeing with the trustee's position that Cohen had filed a fraudulent claim." Respondent explained that she and Toole agreed that their position "was the truth" and that filing separate pleadings would have been "a waste of the court's time." For her part, Toole testified that she jointly filed the pleading with Respondent because "the only way to get evidence before the bankruptcy court" was through Respondent, who had standing as a claimant in the case.

On August 19, 2022, Respondent contested the portions of Chris Mattair's claim related to the civil litigation between Toole and Mattair, including Mattair's claim for Cohen's attorney's fees from the dissolution case.[41] In her filing, Respondent alleged that "[a] request to the trustee was made by [Respondent] in November 2021 to object to this claim, but no action by the trustee has been taken."[42] That same day, Respondent also objected to David Mattair's claim for interest in the Ouray property and asserted that the bankruptcy court should disqualify both the Mattairs' counsel due to "clear evidence that [David Mattair's] interest is different from [Chris Mattair's] . . . ."[43] In each pleading, Respondent relied on her interest as an unsecured claimant in the case, stating that the claims to which she objected "reduced the bankruptcy estate for the other claimants and parties in interest, including [Respondent]."[44]

The Lyons Property

In June 2018, before Toole and Mattair ended their relationship, they obtained the title to a property located on Main Street in Lyons ("the Lyons property").[45] As part of the transaction, Toole and Mattair assumed a debt owed to Sanford and Marsha Williams and secured by a deed of trust ("the Williams DOT") that encumbered the Lyons property.[46] Toole and Mattair were

[40] Ex. S17 ¶¶ 2, 7, 21-22, 29.
[41] Ex. S26 ¶¶ 4, 41.
[42] Ex. S27 ¶ 2.
[43] Ex. S28 ¶ 5.
[44] Ex. S26 ¶ 29; Ex. S27 ¶ 40.
[45] Ex. S1.
[46] Ex. S34 at 4.

jointly and severally liable on the Williams note.[47] To help finance the purchase, Toole separately incurred additional debt from Matthew Sutton secured by another deed of trust on the Lyons property ("the Sutton DOT").[48]

Toole and Mattair defaulted on the Williams note, and on January 31, 2020, the Williamses sought to foreclose on the deed of trust.[49] On July 16, 2020, while the foreclosure proceeding was pending, RBL Financial LLC ("RBL") purchased the debt secured by the Williams DOT.[50] When Toole petitioned for bankruptcy that September, her fifty-percent interest in the Lyons property transferred to the bankruptcy estate, and an automatic stay against enforcing liens as to her interest took effect.[51] The stay also applied to actions against Toole personally.[52] Thus, in October 2020, RBL turned to Mattair to collect on the debt from the Williams DOT, as Mattair remained personally liable on the debt and was not protected by the bankruptcy stay.[53] In exchange for his release from the debt obligation, Mattair quitclaimed his fifty-percent ownership interest in the Lyons property to Main 434 LLC, a shell company formed by RBL's owners.[54]

Respondent testified that Lewis, the bankruptcy trustee, held an auction for the Lyons property in lieu of selling it from the bankruptcy estate. Toole bid in the auction, and on April 19, 2021, the bankruptcy court entered an order allowing Toole to repurchase her fifty-percent interest in the Lyons property for $8,000.00.[55] The order terminated the bankruptcy estate's claim or interest in the Lyons Property and reverted that interest back to Toole, subject to the Williams DOT, the Sutton DOT, and Main 434's half-ownership interest.[56] The order emphasized that "[t]he sale of the Property **IS NOT** and **SHALL NOT** be considered a sale free and clear of any and all liens, claims, and encumbrances on the Property. No creditors' interest in the Property shall be effected [sic] by the sale and shall not be effected [sic] by this Order."[57]

Respondent and Toole Form SA Lyons, LLC

When Toole bid to repurchase her interest in the Lyons property, she did not have the $8,000.00 to back the bid, so she asked Respondent and Toole's realtor, Sarah Larrabee, to help fund the transaction. Respondent testified that she, Toole, and Larrabee discussed forming a venture to finance Toole's bid and to develop the Lyons property into a restaurant, which the group would own and operate. On April 29, 2021, Respondent wrote to Toole and Larrabee:

[47] Ex. S34 at 4.
[48] Ex. S34 at 4.
[49] Ex. S34 at 4-5.
[50] Ex. S34 at 5.
[51] Ex. 13.
[52] Ex. 13.
[53] Ex. S34 at 5.
[54] Ex. S34 at 5.
[55] Ex. S34 at 6.
[56] Ex. S34 at 7; Ex. 13 at 2.
[57] Ex. 13 at 1-2.

> I realized that we hadn't actually confirmed with documents what has happened as far as the restaurant property and we should finalize something for now so we can move forward.
>
> I drafted a proposed LLC . . . . I also have a proposed Quit Claim Deed so that we document what the ownership of the interest is at the momen[t].[58]

Respondent attached two files titled "toole sara sarah angie llc deed.doc" and "sara sarah angie llc article of organization.doc," and she advised Toole and Larrabee to seek independent legal advice before entering into a business transaction with her.[59]

On May 14, 2021, a hearing board issued an opinion in disciplinary case number 19PDJ056, consolidated with case number 20PDJ030, suspending Respondent from the practice of law for three years. Five days later, on May 19, 2021—before Respondent's suspension took effect—Toole and Respondent signed a document titled "Articles of Organization of Sara and Angie Limited Liability Company," forming an LLC to "own, operate and develop the property currently owned in the name of Sara Toole pursuant to a deed obtained in a Bankruptcy proceeding . . . ."[60] The articles of organization—which functioned as an operating agreement—originally provided that Respondent and Larrabee would each contribute $4,000.00 to capitalize the LLC.[61] Respondent testified that Larrabee opted not to join the venture, however, and so Respondent contributed the full $8,000.00. The articles of organization also provided that "Interest in the LLC will be increased depending on any monetary contributions made by each member."[62]

On June 18, 2021, Respondent's three-year suspension began. At the hearing, Respondent called her suspension "a gift" because it was an impetus to go into business with Toole and open a restaurant at the Lyons property. In the months that followed, Respondent would focus her attention and her funds toward developing the Lyons property. Respondent registered the LLC with the Colorado Secretary of State under the name SA Lyons LLC on August 10, 2021.[63]

Respondent Pays to Satisfy Toole's Debt Secured by the Williams DOT

With Toole's interest in the Lyons property no longer subject to bankruptcy protection, RBL recommenced the foreclosure proceedings on the Williams DOT encumbering the property. Before the foreclosure sale occurred, Respondent paid $125,837.91 of her personal funds to cure

[58] Ex. S11.
[59] Ex. S11.
[60] Ex. S12 ¶ 3.
[61] Ex. S12 ¶ 6.
[62] Ex. S12 ¶ 7.
[63] Ex. S13.

Toole's monetary default on the Williams note.[64] But Toole, by filing bankruptcy, violated the terms of the Williams note, triggering a non-monetary default of the Williams DOT, and RBL commenced a second foreclosure of the Williams DOT shortly after Respondent paid funds to cure the monetary default.[65] Around September 2021, Respondent paid another $265,000.00 to avoid the foreclosure, fully satisfying the debt owed under the Williams Note.[66]

At the disciplinary hearing, Christopher Conant, who represents RBL and Main 434, testified that RBL accepted the second payment believing that Respondent paid it on Toole's behalf. Conant explained that because a creditor has a legal duty to accept payment from its debtor, RBL believed it was obligated as Toole's creditor to accept the payment.

Respondent Pushes Toole to Convey Interest in the Lyons Property

On September 15, 2021, Respondent suggested that Toole quitclaim her interest in the Lyons property to SA Lyons, writing:

> [W]e should record the deed from the bankruptcy and then record it into SA Lyons LLC so at least your part of the ownership will be documented formally. I think the way to do that would be to quit claim from Sara Toole to SA Lyons LLC. Then RBL can't personally harass you anymore.[67]

One day later, Respondent pushed Toole to execute a deed of trust securing Respondent's payments to RBL:

> To make sure that RBL doesn't try to do some chicanery and take over the restaurant after I've paid all this money, I think we should do a deed of trust that is recorded for the total amount paid and so it prevents Matthew [Sutton] from foreclosing and shutting us out as well. It would be a second priority lien but it would still give us rights to be notified if there is anything done with foreclosures or title problems. . . . If you are ok with that I'll send you a deed of trust that reflects my investment and we can get it filed. . . . I'll do it for the full 271000 plus the foreclosure amount which was 129 something.[68] That way we can be assured no one can walk away. Especially RBL with their bullshit title from Chris [Mattair] without paying me back. In addition, Chris still has his lis pendens filed against this property which also clouds the title although the case that clouds the title is dismissed so we could get rid of it easily I think.[69]

[64] Ex. S34 at 7.
[65] Ex. S34 at 7.
[66] Ex. S34 at 7.
[67] Ex. 2 at 4.
[68] The record is not clear as to whether these figures include Respondent's $8,000.00 initial investment in SA Lyons LLC.
[69] Ex. 3 (cleaned up).

The following day, on September 17, 2021, Respondent sent a deed of trust to Toole, writing, "[H]ere is a proposed deed of trust. This reflects my investment which is [$271,000] plus the foreclosure which was $130000. We need to record this so that RBL can't just walk away with Chris' interests and pretend that they own the property."[70] In an email to Toole the next day, Respondent added, "This would be consistent with our agreement that has my investment repaid and then profits shared. . . . I have reached out to [Matthew Sutton's] attorney about doing a deal but haven't heard from him."[71] Later that day, Respondent wrote Toole, "No matter what since the entire amount of lien was my money and the foreclosure interest was mine the entire amount is a 3rd lien on the property. The agreement was interest in proportion to investment."[72]

On September 30, 2021, Respondent sent an email to Russ Landau at RBL about pursuing an agreement to address and fund the maintenance issues with the Lyons property. Respondent blind copied Toole on the email. Respondent concluded her message:

> You can send your check for your share of the expenses and your share of the payoff of the mortgage to me . . . . Until then, my position is that you have no ownership interest in this building at all. Your interest was subject to foreclosure and the redemption was solely in [Sara Toole's] name without your assistance and therefore your interest is non-existent.[73]

At the hearing, Respondent stated that she believed she shared in the legal ownership of the Lyons property based on "the fact that I paid $400,000.00 to redeem the foreclosure." She added, "In September of 2021, it was my belief that I had an ownership interest in this property and that Sara [Toole] had actually signed a quitclaim deed at that point but had not been able to notarize it." Respondent testified that she believed that she, Toole, and RBL were tenants-in-common of the Lyons property. On October 1, 2021, she shared this view with Toole in an email with the subject "here is an article that explains cotenants."[74] The email contained an attachment titled "Cotenants_Right to Possession v. Right to Contribution.pdf."[75] Respondent testified that she found the document online. In her message to Toole, Respondent wrote:

> [T]his is pretty clear that if [RBL] refuse[s] to share in the outrageous sums they were charging, they can't demand ownership and there is no profit until expenses are paid. Taxes, mortgage and insurance are all requirements and we can demand and should continue to demand that they pay what they consider their share of the ownership or demand that they abandon their claim and walk away.[76]

[70] Ex. 4 at 1.
[71] Ex. 4 at 1.
[72] Ex. 4 at 2.
[73] Ex. 5 at 1-2.
[74] Ex. 6.
[75] Ex. 6.
[76] Ex. 6.

RBL Seeks Judicial Foreclosure on the Sutton DOT

When Respondent satisfied Toole's debt under the Williams DOT, the Sutton DOT advanced to a first position lien against the Lyons Property, encumbering only Toole's interest in the property, as she alone was liable on the note.[77] Conant testified at the hearing that RBL acquired Sutton's note secured by the Sutton DOT, which remained attached to the Lyons property following Toole's repurchase of her interest from the bankruptcy estate. The Sutton note was in default, and Conant filed a complaint for judicial foreclosure on the Sutton DOT on October 15, 2021, in Boulder County District Court case number 21CV30778.[78] Soon after, on October 20, 2021, Respondent emailed the following letter to Landau with the subject line, "Re: 432 Main Street":

> I am writing to you to demand that your company contribute your share of the interest payments, mortgage payments, and foreclosure redemption immediately.
>
> The total of those payments was $400,000. This is the basis of the loan obtained to pay the interest, mortgage and foreclosure redemption. If you assert that you have an ownership in this property, then you have absolutely no basis to refuse the rightful request from the other tenant in common, Sara Toole for reimbursement for your share. If you refuse to contribute your share, then a quiet title action will be instituted and a request to negate your claim on this property will be presented to the Court.
>
> In addition, it is my understanding that the Squier Realty note that was in foreclosure was entitled to collection of rent from the tenant that remained in possession of the property during the period of time that the property was in the possession of the receiver and bankruptcy. We would like to have an accounting of the rental payments by you as the note entitled you to payment of those rental payments by right, or why those payments were not collected and credited to Ms. Toole's account and deducted from the overall demand that was made.
>
> Additionally, it appears that your company has filed a foreclosure based on a purchase of Matthew Sutton's lien. I have contacted an attorney and I believe that you have violated the automatic bankruptcy stay as Mr. Sutton's claim remains actively part of the bankruptcy case with relation to Sara Toole and you are a successor in interest to his claim in bankruptcy. I confirmed his continued active claim in the bankruptcy with Mr. Sutton's bankruptcy attorney today. The automatic stay would forbid any attempt to foreclose on a debt while Mr. Sutton's claim remains actively part of the bankruptcy case. Attorney's fees and damages will be requested. An injunction against proceeding with the foreclosure will be sought immediately.

[77] Ex. S34 at 8.
[78] Ex. S14.

> Finally, you were on notice of the necessary repairs and work done on the property and invoices were sent care of your attorney. These repairs were absolutely necessary to preserve the status of the property. This responsibility remains the obligation of the mortgagee and continues by virtue of your claim to ownership in the property. The deed of trust requires that the mortgagee maintain the property in good repair. These invoices remain unpaid. A mechanic's lien will be filed against this property by the construction company if you continue to refuse to pay your share of the necessary repairs made to this property.[79]

According to Conant, Landau immediately forwarded Respondent's demand letter to him. Conant testified that he believed that Respondent sent the letter as Toole's counsel. He reached this conclusion because in the letter Respondent advocated for Toole's interest in the Lyons property and he knew that Respondent represented Toole in the litigation against Mattair. But Respondent did not claim to be Toole's lawyer in the letter. Consequently, the letter created "significant confusion," Conant said, because he was unsure if Respondent sent the letter in a representative capacity, thus requiring a response from his client.

Respondent continued to strategize with Toole about securing compensation from RBL for costs for developing the Lyons property, emailing her on November 2, 2021:

> [A]nything that [I've] sent you now let's forward to Russ [Landau] at his email as I want to make sure he receives the invoices and then doesn't protest when we ask him to pay. He can't protest if he refuses to answer you and doesn't object to [the] work you are authorizing.
>
> I worked on the contractor agreement and should have sent it yesterday as we need to have that documented in order to file the mechanics lien.[80]

Respondent Devises Strategies to Respond to New Foreclosure

Meanwhile, Respondent also strategized with Toole about how to respond to RBL's new foreclosure. Respondent proposed recording a new deed of trust on the property. On November 2, 2021, she suggested to Toole that "we should talk about the best way to get this deed of trust and note filed. It might be that we would be able to foreclose on this note while they argue about whether Matthew Sutton could proceed in his foreclosure . . . interesting question."[81]

Respondent also sought to make the foreclosure an issue in Toole's bankruptcy proceeding, emailing Lewis, Larson, and Toole about RBL's attempt to foreclose on the Sutton DOT:

---

[79] Ex. S15.

[80] Ex. 7 at 1.

[81] Ex. 4 at 2. Respondent presumably intended to refer to RBL, not Sutton, in her email, as RBL had moved to foreclose on the Sutton DOT by this time.

> It is my understanding that efforts to enforce a debt against a debtor while the bankruptcy is proceding [sic] are violations of the automatic stay. *Suh v. Anderson (In re Jeong)*, 2020 WL 1277575 (B.A.P. 9th Cir. Mar. 16, 2020)[.]
>
> RBL who have identified as successors in interest to Matthew Sutton have filed a nonjudicial foreclosure action in Boulder County.
>
> RBL's attorney has filed a notice of transfer, but I believe that the foreclosure filed by RBL should be judged a violation of the automatic stay until Matthew Sutton/RBL's claim is resolved in bankruptcy.
>
> Can you please let me know what your position is with relation to this foreclosure?[82]

Just over two weeks later, Respondent again raised the issue of the foreclosure with Larson and Toole, writing, "But I [think] that is the exact problem [because RBL] is attempting to collect on the entire debt which is currently the subject of the unsecured claim against [Toole]. How can [RBL] collect on the entire debt on the property and remain as an unsecured debtor in bankruptcy?"[83] Larson commented that "[y]our inquiry comes very close to the line of representation. . . ."[84] Toole quickly followed up, writing, "Hey Mark, what [Respondent] is saying was exactly the point of my filing. . . ."[85] In a separate email to Respondent only, Toole wrote, "I think we are going to have to file suit against [the bankruptcy trustee]. This is absolutely corrupt."[86]

Respondent discussed with Toole yet another means to address the foreclosure, emailing Toole an article describing tenancy in common in Colorado on November 5, 2021, the day she and Toole submitted their joint pleading challenging Chris Mattair's claim in the bankruptcy proceeding.[87] The article defined tenants in common, described the rights of tenants in common, and noted that "[t]enancy in common is presumed in Colorado law, unless joint tenancy is expressly stated in the deed."[88] Respondent wrote in the email's subject line, "**so RBL and you and [sic] me are now tenants in common so each of us has the right to possession**."[89] At the disciplinary hearing, Respondent explained this communication, testifying, "It was my opinion, based on what had happened, that I had an ownership interest in the property because [Toole] had signed a quitclaim deed, just had not recorded it, we had an ownership agreement that said that we were owning it together and I had contributed the amount to secure the

[82] Ex. 7 at 2.
[83] Ex. 8 at 4.
[84] Ex. 8 at 4.
[85] Ex. 8 at 4.
[86] Ex. 8 at 4.
[87] Ex. 8 at 3.
[88] Ex. 8 at 3.
[89] Ex. 8 at 3.

foreclosure. It was my opinion that we were tenants in common. . . . So, November 5, 2021, I had paid $400,000.00 to redeem this property, and I believed I had an ownership interest."

Respondent Seeks to Intervene in Foreclosure Case

Meanwhile, Conant testified, Respondent and Toole continued to renovate the Lyons property. Conant said that after RBL was denied access to the property, he moved to appoint a judicial receiver. On November 12, 2021, Respondent moved to intervene in the judicial foreclosure case and sought an emergency hearing to enjoin the appointment of a judicial receiver. According to Respondent, Toole's interest in the Lyons property and Respondent's interest in the property were "essentially inseparable at this point."

In her motion to intervene, Respondent sought to "represent her own interest as a deed of trust holder on the property."[90] Her interest, she claimed, arose from "financing in the amount of $400,000 secured by a deed of trust [on the property] which Sara Toole used to redeem the first and second foreclosures on the subject property."[91] Respondent alleged, among other things, that RBL did not properly serve Toole in the case and that RBL had failed to maintain the Lyons property when it was required to do so.[92] She also petitioned the court to find that the foreclosure action violated the stay in Toole's bankruptcy case.[93]

In her request for an emergency hearing for injunctive relief, Respondent argued that the appointment of a receiver would "cause irreparable harm to [Toole], and to [Respondent's] security interest in the building. It will prevent the ability of Ms. Toole to obtain financing to pay the foreclosing lien."[94] Respondent continued, "It is impossible for Sara Toole to payoff [sic] the [Sutton] Note at this time because RBL LLC as successor in interest to the Sutton Deed of Trust remains an active claimant in the Toole bankruptcy and the Bankruptcy Trustee has not discharged or disallowed the RBL LLC claim."[95] In addition, Respondent renewed her allegation that RBL was violating the stay in Toole's bankruptcy case.[96] Respondent thus asked the Boulder County District Court to stay the appointment of a judicial receiver and to make the following findings:

1. The judicial foreclosure and non judicial foreclosure against Sara Toole while remaining a secured and unsecured creditor in the bankruptcy violates the automatic stay under 11 USC 362.

2. There is a substantial likelihood that Sara Toole will prevail on the claims of unjust enrichment against RBL LLC and Sara Toole has a substantial likelihood to prevail in her request for contribution to her expenses which preserved RBL LLC's dba 434

[90] Ex. S19 ¶ 38.
[91] Ex. S19 ¶ 16.
[92] Ex. S19 ¶¶ 2, 46.
[93] Ex. S19 ¶ 54.b.
[94] Ex. S18 ¶ 62.
[95] Ex. S18 ¶ 70.
[96] Ex. S18 ¶ 71.

Main's [sic] own interest in the subject property as Defendants successors in interest to Christopher Mattair's tenant in common interest in this property.

3. Sara Toole has acted reasonably in attempting to preserve and protect the building and should be allowed to remain as debtor in possession.

4. RBL LLC has been unjustly enriched by Sara Toole's payment of the redemption amounts of the first and second foreclosure liens against the property in an amount to be determined at trial.

5. RBL LLC has demonstrated through their inaction as a previous receiver in possession that their failure to preserve the property and pay for necessary repairs could result in irreparable harm to the building and to Ms. Toole's financial interest.

. . .

9. RBL LLC should be ordered to reimburse Sara Toole for the payments made which have resulted in their unjust enrichment.[97]

According to Conant, the court granted RBL's request for a receiver, who posted a stop work notice on the door to the Lyons property, changed the locks on the doors, and barred all access to the property. On December 7, 2021, while her motion to intervene remained pending, Respondent moved for an emergency hearing, arguing that the court should order the receiver to allow Respondent and Toole to continue developing the Lyons property and grant access to tenants to whom Toole had leased space in the property.[98] That same day, Respondent filed a reply to Conant's response to her motion to intervene, arguing that she had "a potential financial interest to be claimed"[99] and alleging, among other things, that "Russell Landau and [bankruptcy trustee] Barry Lewis appear to have been alerted to Ms. Toole's ownership of this restaurant property and financial distress by Mr. Cohen and/or [Chris] Mattair."[100] Respondent also pressed for the court to disqualify Conant because, as counsel for RBL and Main 434, he represented parties on both sides of the foreclosure action.[101]

On December 9, 2021, Judge Andrew Hartman of the Boulder County District Court denied Respondent's motion to intervene, finding that Respondent failed to "assert any cognizable legal claim."[102] Judge Hartman added, "Assuming arguendo that the disposition of this action may impair or impede [Respondent's] 'interest' (whatever interest that may be), [Respondent] has not demonstrated that Sara Toole cannot adequately represent

[97] Ex. S18 at 9-10.
[98] Ex. S20 ¶ 30.a.
[99] Ex. S21 ¶ 5.
[100] Ex. S21 ¶ 39.
[101] Ex. S21 at 11-13. Conant testified that he represented another party in the action, IKON Funding LLC, to which Main 434 had conveyed its security interest in the Lyons property.
[102] Ex. S22 ¶ 1.

[Respondent's] interest."[103] Judge Hartman concluded by noting that Respondent had represented Toole in three previous cases in Boulder County District Court, stating that "[Respondent's] attempt to intervene in this case as a 'pro se' litigant in which her 'former' client Sara Toole is a defendant, appears nothing more than a subterfuge to traverse her recent suspension from practicing law . . . ."[104]

Respondent Pays to Cure Toole's Default of the Sutton DOT

On February 7, 2022, Respondent paid $371,433.55 to the Boulder County Public Trustee to cure Toole's default under the Sutton DOT, fully satisfying Toole's debt under the Sutton DOT and leaving Toole and Main 434—as Mattair's successor in interest—as the only two record owners of the Lyon property.[105]

On February 23, 2022, Respondent exchanged emails with Lyons officials and Toole regarding a permit for the Lyons property. In the emails, Respondent asserted that Conant was no longer authorized "to say anything to you about this property"[106] because, she said, Main 434 had disclaimed its interest.[107] In contrast, Respondent proclaimed that she was an owner of the Lyons property "[p]ursuant to the [SA Lyons] LLC operating agreement . . . ."[108] Respondent threatened one official, "If you arbitrarily [pull our] permit then I believe we will have to take legal action against the town[.]"[109]

That same day, Respondent sent Toole a draft email containing case law describing the "arbitrary and capricious" standard for review of an agency action.[110] The draft email continued:

> I believe your action in refusing to allow us to resume work on this property is arbitrary and capricious. We provided you proof of ownership and have a lawfully issued permit obtained by a construction professional and have paid all necessary fees.
>
> I will be consulting with my attorney and we will probably deliver a notice of intent to sue.[111]

Toole replied, "I would not bother to send this. . . . If we are going to sue, we should just file."[112]

---

[103] Ex. S22 ¶ 2.
[104] Ex. S22 ¶ 3.
[105] Ex. S34 at 8. In total, Respondent testified, she paid approximately $768,000.00 of her own funds to satisfy Toole's debt under the notes secured by the Williams and Sutton deeds of trust.
[106] Ex. 9 at 1.
[107] Ex. 9 at 2.
[108] Ex. 9 at 3.
[109] Ex. 9 at 1.
[110] Ex. 9 at 6.
[111] Ex. 9 at 6.
[112] Ex. 9 at 6.

Main 434 Seeks Partition of the Lyons Property

After Respondent paid off the Sutton DOT, Main 434 moved to partition the Lyons property in the judicial foreclosure proceeding.[113] On May 31, 2022, the Boulder County District Court appointed retired Chief Justice Nancy Rice as commissioner to determine the ownership interests in the property.[114] On November 8, 2022, Chief Justice Rice produced her findings of fact and conclusions of law regarding the partition of the Lyons property, concluding that Toole and Main 434 were the only record owners of the Lyons property and that "[n]o evidence was ever presented by any party that [Respondent] has any form of interest in the Property."[115] Rather, "[t]he undisputed evidence revealed that [Respondent's] payment of the debt owed to RBL Financial LLC and supplying the $8,000.00 for Sara Toole to repurchase her 50% interest in the [Lyons] Property from her bankruptcy estate were all capital contributions by [Respondent] into SA Lyons LLC."[116] On November 14, 2022, the Boulder County District Court adopted the findings of fact and conclusions of law as an order.[117]

At the disciplinary hearing, Respondent testified that she was not allowed to present evidence during Chief Justice Rice's investigation because she was not a party to the foreclosure case. She disputed the conclusion that her payments on Toole's debts were solely capital contributions into SA Lyons that did not create an equitable interest in the Lyons property. Toole testified she told her counsel in the partition case, Eric Coakley,[118] that she had signed a deed of trust for the Lyons property. According to Toole, Coakley advised her not to record the deed of trust until the partition proceeding concluded.

Respondent Disputes RBL's Claims in Toole's Bankruptcy and Alleges Ownership in the Lyons Property

On August 17, 2022, Respondent objected to RBL's two bankruptcy claims in two separate filings, alleging that her payments on the Williams DOT and the Sutton DOT satisfied the claims and that the bankruptcy trustee, Lewis, had nonetheless taken no action to disallow the claims.[119] The next month, on September 28, 2022, Respondent filed a statement, notice, and objection in the bankruptcy case, maintaining that she had not "intentionally asserted any rights other than her own as a claimant in the bankruptcy process *and as a co-owner of the [Lyons property]*."[120] Indeed, on the first day of the three-day disciplinary hearing, Respondent testified that she located a quitclaim deed to the Lyons property the day before. The executed deed, said Respondent, was signed by Toole and named Respondent as grantee. Though Respondent

[113] Ex. S34 at 1.
[114] Ex. S34 at 1-2.
[115] Ex. S34 at 8.
[116] Ex. S34 at 9.
[117] Ex. S34.
[118] According to Toole, Respondent paid Coakley's attorney's fees in the case.
[119] *See* Ex. S25 ¶¶ 2, 15, 36; *see also* Ex. S26 ¶¶ 2, 17, 22-24.
[120] Ex. 14 ¶ 6 (emphasis added).

stated that she intended to have Toole authenticate the quitclaim deed at the disciplinary hearing, she never produced the document.

Respondent also testified that Toole possesses a deed of trust to the Lyons property secured by the funds that Respondent paid to satisfy Toole's debt under the Williams note. Yet Respondent acknowledged at the disciplinary hearing that she "[has] not seen a signed deed of trust. I gave [Toole] a deed of trust and she told me that she signed it." Even so, only two weeks before the disciplinary hearing, on February 8, 2023, Respondent filed a complaint in Boulder County District Court case number 23CV14 against Toole, RBL, Main 434, and their principles Landau and Barry Lewis. In her complaint, Respondent alleges, "Ms. Toole promised to execute a deed and a deed of trust in return for Ms. Layton's payment of the first and second and third foreclosure amounts. Ms. Toole has failed to execute those deeds."[121]

Toole testified that she "vaguely recalled" signing a deed for the Lyons property in February 2022. She signed only one deed, she said, adding that she "really [didn't] know" the location of the deed, only that she did not have a copy of it. Though Toole was unsure if the instrument was a deed of trust or a quitclaim deed, she recalled that it "was into the LLC's name," not Respondent's name. Toole reinforced this point, stating, "My intention was to . . . quitclaim the interest to [SA Lyons] and then [Respondent] would have the majority interest based on her capital contributions." She confirmed that Respondent's payments were capital contributions into SA Lyons under the LLC's operating agreement: "We continued on the basis of the operating agreement that [Respondent] had invested in the company that we were creating and that the company was going to own the building and that [Respondent's] contributions would be materially attributed to [Respondent's] ownership through a deed at some point."

Toole's Statements on Respondent's Role

During her testimony, Toole reflected that she viewed Respondent as a business partner and not as her lawyer in the period after Respondent's suspension, stating that Respondent "[brought] her expertise to bear" on the business matters that they faced. Toole employed a metaphor about a fisherman who could no longer fish "but went into business with another fisherman and had a lot of advice" about fishing. According to Toole, she and Respondent faced "lots of curveballs" in their business venture, and she recalled that Respondent "had legal strategies . . . . she had legal ideas" about how to address the obstacles they faced, and that Respondent shared those ideas with her. She added that Respondent also sent her case law. Even so, Toole considered Respondent's activities "input from a business partner, not legal advice," and rendered on the basis of their business partnership.

Communications between Toole and Respondent demonstrate that Toole had questions about the relationship in the period just before Respondent's suspension. In an email thread with the bankruptcy trustee's lawyer, Larson, Toole emailed Respondent privately, stating:

[121] Ex. 15 ¶¶ 538-39.

> [T]he last time you reached out to Mark [Larson] on the restaurant he replied and said he needed to know if you were my attorney as I had said you were not my active attorney . . . as he wanted permission to talk to you. He will probably reply the same thing and I was wondering what I should say.[122]

Toole said that Respondent did not give her legal advice after Respondent was suspended. But on September 14, 2021, after Respondent paid off the Williams note, she wrote to Toole:

> What I am going to do is file a mortgage for the total amount that I have put out which is 129000 plus the 271 as a lean on the property as if we did an actual mortgage loan to me which would then allow us to be a second party redeemer if the property ever went to foreclosure. I also reached out to Matthew [Sutton's] lawyer to see if Matthew would be willing to sell his interest or transfer it somehow.[123]

In response, Toole asked, "Do they have to agree to let you pay the mortgage, since you aren't the mortgage holder? Do you think they will cash the check?"[124] Respondent answered, "They can't refuse the check. I'm going to file like a regular mortgage and do mechanics liens for all the work. If we cloud the title enough I'm hoping they will just walk away. . . . [M]y check to them is no different than a check from a mortgage company. . . . [T]hey will be in big trouble if they refuse to release the lien. . . ."[125]

Finally, Toole noted that she sought Coakley's advice when Respondent pressed her to execute and record a deed to the Lyons property, because she did not know the best course of action and "didn't trust that [Respondent] knew at that point because [Respondent] was a biased party in terms of being panicked and having so much money invested." Toole noted that she followed Coakley's advice not to record the purported deed to the Lyons property.

III. RULE VIOLATIONS

Colo. RPC 3.4(c) (Claim I) and Colo. RPC 5.5(a)(1)-(2) (Claim II)

Colo. RPC 3.4(c) provides that a lawyer must not "knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." The People allege that Respondent knowingly violated the disciplinary order in case number 19PDJ056 (consolidated with 20PDJ030) suspending her from practicing law when, while she was suspended, she practiced law by advising or assisting Toole with Toole's legal rights or duties and by acting in a representative capacity in advancing or defending those legal rights or duties. In doing so, they allege, Respondent also violated Colo. RPC 5.5(a)(1) and (2);

[122] Ex. S10 at 4.
[123] Ex. 2 at 1 (cleaned up).
[124] Ex. 2 at 1.
[125] Ex. 2 at 1-2.

those rules prohibit a lawyer from practicing law in Colorado without a valid law license and from practicing in any jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction.[126]

Specifically, the People claim that certain exhibits admitted at the hearing show that Respondent engaged in the unauthorized practice of law by acting in a representative capacity in protecting, enforcing, or defending Toole's legal rights and duties regarding the Lyons property and in Toole's bankruptcy case.

Respondent disputes that she practiced law while she was suspended. She argues that she advocated only for her own business interests in the Lyons property and acted to protect those interests through court filings and communications with Toole and others. She also contends that she was entitled to protect her claim as an unsecured creditor in Toole's bankruptcy case and that her litigation in that matter advanced her interests in her claim.

Colorado jurisprudence defines the practice of law to include acting in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another person, and counseling, advising, and assisting another person in connection with that party's legal rights and duties.[127] Stated more broadly, the practice of law involves the exercise of professional judgment, calling upon "legal knowledge, skill, and ability beyond [that] possessed by a layman."[128] An individual who is not licensed to practice law thus "engages in the unauthorized practice of law by offering legal advice about a specific case, drafting or selecting legal pleadings for another's use in a judicial proceeding without the supervision of an attorney, or holding oneself out as the representative of another in a legal action."[129] In contrast, directing or acting on matters of general knowledge, even if knowledge of a rule of law, does not constitute the practice of law.[130]

An individual—even a suspended lawyer—who represents themselves before tribunals in legal matters does not thereby engage in the unauthorized practice of law, because that person

---

[126] *See also People v. Zimmermann*, 960 P.2d 85, 87 (Colo. 1988) (finding that a lawyer violated Colo. RPC 5.5(a) prohibiting practicing law in violation of the rules of the legal profession when he practiced law while suspended).

[127] *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006) (citing *Denver Bar Ass'n v. Public Utils. Comm'n*, 391 P.2d 467, 471 (Colo. 1964)).

[128] *In re Swisher*, 179 P.3d 412, 417 (Kan. 2008); *see also People v. Adams*, 243 P.3d 256, 266 (Colo. 2010) (noting that prohibited activities involving the lay exercise of legal discretion including giving advice to others about their legal matters and preparing court pleadings on behalf of others).

[129] *Shell*, 148 P.3d at 171.

[130] *Charter One Mortg. Corp. v. Condra*, 865 N.E.2d 602, 607 (Ind. 2007); *see also Conway-Bogue Realty Inv. Co. .v. Denver Bar Ass'n*, 312 P.2d 998, 1008 (Colo. 1957) ("The profession is not so strongly intrenched in public confidence that it may safely insist on exclusive right to apply, in simple matters, knowledge of the law which is equally the equipment of business [people].") (citation and quotation omitted).

is not representing another.[131] In contrast, a limited liability company is a statutory or corporate entity that cannot do anything for itself, and, with limited exceptions, the only way such an entity can appear in court is to have a lawyer appear on its behalf.[132]

We first look to Respondent's conduct related to the Lyons property. As a threshold matter, we address Respondent's arguments that she had a legal interest in the Lyons property because Toole allegedly signed a deed conveying the interest to her and because her payments to prevent foreclosure on the property gave rise to an equitable interest in the property. First, Respondent failed to convince us that Toole signed any deed granting her an interest in the property. We find wholly incredible her self-serving testimony that she found a quitclaim deed to the property signed by Toole the day before this hearing began. Respondent never attempted to introduce the deed, even though she said that she intended to present it for Toole's authentication at the hearing. Moreover, Toole's testimony that she signed a deed was murky; she struggled to describe what kind of deed she had signed or where the deed could be. But even if we concluded that Toole in fact signed a deed conveying some interest in the Lyons property, she testified that the instrument named SA Lyons, not Respondent personally, as the grantee. We credit this aspect of Toole's otherwise uncertain testimony because she confirmed that she intended to quitclaim an interest in the property to SA Lyons and that Respondent's payments related to the property were capital contributions to SA Lyons under its operating agreement.

Second, Respondent did not demonstrate that she obtained any equitable interest in the Lyons property based on her outlay of funds to stave off the foreclosures on the property. In contrast, neither Chief Justice Rice nor Judge Hartman determined that Respondent possessed a legal interest in the property. Consistent with Toole's testimony, Chief Justice Rice concluded that Respondent's payments were capital contributions into SA Lyons under the LLC's operating agreement. Respondent could not show otherwise. We thus are not persuaded that she had a legal interest in the Lyons property.

Moreover, we are unable to credit Respondent's assertion that she believed in 2021 and 2022 that she held a cognizable legal interest in the Lyons property. During that period, Respondent inconsistently asserted different interests, representing to the Boulder County District Court that she had a security interest secured by a deed of trust and writing to the bankruptcy court that she had an ownership interest in the property. At the disciplinary hearing, Respondent asserted both theories, testifying that Toole possessed a signed deed of trust for the Lyons property in Respondent's favor and that Toole had quitclaimed to Respondent an ownership interest in the property. Yet Respondent could not produce convincing evidence that either instrument ever existed. Toole testified that that she did not have a signed deed of any sort in her possession. And as we noted, Respondent never produced any quitclaim deed during

[131] *Naylor Senior Citizens Hous., LP v. Side Const. Co.*, 423 S.W.3d 238, 245 (Mo. 2014).

[132] C.R.S. § 13-1-127; *see also Weston v. T & T, LLC*, 271 P.3d 552, 556–57 (Colo. App. 2011) ("A limited liability company is an artificial entity created by law. Thus, unlike a natural person, it generally cannot appear or act in a judicial proceeding in person, but must be represented by a licensed attorney.") (internal citation omitted).

the proceeding or at the hearing, claiming, incredibly, that the deed was not material to the disciplinary case and suggesting that we would not have believed that the deed was authentic even if she had produced it. Meanwhile, Respondent insisted that she obtained an equitable interest in the Lyons property by paying Toole's debt but did not point to any authority to support that claim. The evidence, in sum, casts doubt on Respondent's credibility on this score, leading us to conclude that she knew she had no enforceable legal interest in the Lyons property. Moreover, Respondent offered no legal justification for making demands to RBL under Toole's name to secure reimbursement of the interest payments, mortgage payments, and foreclosure redemption she paid on Toole's behalf. Rather, this effort to cast Toole as the payor of the debts further convinces us that Respondent knew that she had not acquired any enforceable legal interest in the Lyons property through her outlay of cash.

Turning to Respondent's conduct related to the Lyons property, we find clear and convincing evidence that she practiced law by attempting to enforce in a representative capacity Toole's interest in the property, thus violating Respondent's order of suspension and breaching Colo. RPC 3.4(c). We begin our analysis with Respondent's demand letter to RBL dated October 20, 2021, in which she advanced Toole's legal interests in at least three respects. First, Respondent threatened legal action if RBL failed to reimburse funds based on "the rightful request from the other tenant in common, Sara Toole."[133] Next, Respondent demanded an accounting of any rental payments collected under the note on which Toole had defaulted. Finally, Respondent asserted that RBL's effort to foreclose on Toole's debt violated the stay in Toole's bankruptcy case. In each instance, Respondent made a demand on Toole's behalf to enforce a right that she characterized as belonging to Toole. Indeed, Conant testified that on reviewing the letter he believed that Respondent was acting on Toole's behalf to defend Toole's interests.[134] Because Respondent took these representative actions, knowing that she had no legal interest of her own to advance with respect to the Lyons property, we find that she knowingly flouted her order of suspension, violating Colo. RPC 3.4(c). Further, because we find that Respondent engaged in the unauthorized practice of law when she violated Colo. RPC 3.4(c), we also conclude that she violated Colo. RPC 5.5(a)(1)-(2).

Yet other examples from the record show Respondent engaging in subterfuge, as Judge Hartman concluded, to circumvent her court-ordered suspension, thereby violating Colo. RPC 3.4(c) and Colo. RPC 5.1(a)(1)-(2). On November 12, 2021, Respondent sought to intervene in the Lyons property partition case and to enjoin RBL from appointing a judicial receiver. In her motion to intervene, Respondent asserted on Toole's behalf that Toole had not been properly served in the case. Moreover, Respondent advocated for Toole's interest in the Lyons property by alleging that RBL failed to maintain the property when it was responsible for caring for the building, and she requested the court find that RBL's foreclosure actions on the property violated the automatic stay in Toole's bankruptcy case. Respondent also requested an emergency hearing on the matter of the judicial receiver appointed to the Lyons property, asserting Toole's right to develop the property and to lease space in the property without

[133] Ex. S15.

[134] Respondent's argument that she advocated for her own monetary interest by using Toole's name is troubling, and we are taken aback by the deception it implies.

interference. Read together, these documents support the conclusion that Respondent sought to intervene as an alternate means of protecting Toole's interest in the Lyons property, given Respondent's inability to take action under the aegis of her law license.[135] Because Respondent could not explain how these actions advanced her own legal interests, we find that she impermissibly advanced Toole's in violation of her order of suspension.

We also find that Respondent, through her conduct, intended not only to protect Toole's interest in the Lyons property, but also to secure the considerable personal funds she paid to redeem Toole's debt on the property. Though we disagree with Respondent that she and Toole held "inseparable" interests in the property, we readily acknowledge that Respondent's and Toole's financial interests became enmeshed, and we credit Toole's testimony that Respondent was "panicked" about losing the money she invested as capital contributions into SA Lyons.

Though these two rule violations are proved by clear and convincing evidence through the Lyons property foreclosure litigation, we nonetheless turn our attention to Respondent's conduct during Toole's bankruptcy proceeding. Here, we are unable to conclude that any single filing in the bankruptcy case individually demonstrates that Respondent advocated for Toole's interest alone and not for her own claim in the matter. Even so, we are comfortable finding that Respondent violated her order of suspension—thereby contravening Colo. RPC 3.4(c)—by guiding Toole throughout the bankruptcy proceeding.[136] Though Toole stated that she did not always follow Respondent's direction, we nonetheless are persuaded that Respondent advised Toole on matters of property law during the case. Respondent sent Toole online articles discussing cotenants, tenancy in common, and joint tenancy in the five weeks before Respondent and Toole filed their combined pleading in the case challenging Chris Mattair's claim that he held an ownership interest in the Ouray house as a joint tenant. That Respondent was plying Toole with advice is further evidenced by her emails to Larson and Lewis—with Toole copied—advocating for the positions Toole would take during the bankruptcy case. First, as to the Ouray house, Respondent wrote on November 4, 2021, that Cohen and Chris Mattair misrepresented to the bankruptcy court that Toole and Mattair owned the property as joint tenants because the Mattairs had broken the joint tenancy. Second, as to the Lyons property, Respondent asserted on November 2, 2021, that RBL's foreclosure violated the bankruptcy stay, supporting her position with citation to legal authority. Respondent made the same argument in a later email to Larson and Toole, with Toole confirming that Respondent was expressing the same position that Toole had staked in the case. Given this evidence, Respondent's pretext that

[135] Even if we could conclude that SA Lyons had been deeded the property, an argument that Respondent was protecting her interests, through her stake in SA Lyons, LLC, would fare no better, as Respondent was by law ineligible to represent that entity.

[136] In the amended complaint, paragraph 56 of Claim I, premised on Colo. RPC 3.4(c), is worded broadly enough to embrace the People's claims that Respondent violated her order of suspension by generally providing Toole legal advice and counsel. In contrast, Claim II of the amended complaint expressly alleges that Respondent violated Colo. RPC 5.5(a)(1)-(2) only by sending and/or filing the specific documents enumerated in ¶ 64(a)-(l) of the amended complaint. We thus do not consider any conduct that is not included in that enumerated list when deciding whether Respondent violated Colo. RPC 5.5(a)(1)-(2).

she merely pursued her own interest in her unsecured claim in the bankruptcy case is of no help here, as Toole utilized Respondent's advice, experience, and knowledge in the bankruptcy case. In sum, Respondent fed Toole assistance and advice that affected Toole's overall case strategy, and Toole's positions in the case were the manifestation of the input and direction that Respondent provided in disregard of the order suspending her.

On the whole, Respondent's conduct and her interactions with Toole following Respondent's suspension show that Respondent was determined to dodge her suspension order by cloaking her behavior as advocacy for her own financial interests. While such an approach on one or two occasions might be deemed reckless, we conclude that Respondent's repeated use of this strategy was a knowing effort to advance Toole's litigation despite her suspension order. We are particularly swayed by Toole's fisherman metaphor—even if Respondent knew she could no longer cast the line herself, she freely advised Toole about her ongoing litigation and, in fact, advocated for Toole's interests in her own filings. Without reservation, we find by clear and convincing evidence that Respondent repeatedly knowingly engaged in the practice of law despite her suspension order, violating Colo. RPC 3.4(c) and Colo. RPC 5.5(a)(1)-(2).

Colo. RPC 8.4(c) (Claim III)

In their third claim, the People allege that Respondent violated Colo. RPC 8.4(c), which proscribes conduct involving dishonesty, fraud, deceit, or misrepresentation. The People must show that in making a misrepresentation, Respondent acted with a mental state of at least recklessness.[137] The People contend that Respondent violated this rule because she falsely represented to Judge Butler that she had worked pro bono on Toole's dissolution of marriage case when in fact she was charging Toole for legal services. Respondent counters that she inaccurately used the Latin term "pro bono." She says she intended to inform Judge Butler that she was working on Toole's case without having received payment, not that she was providing Toole free representation. Respondent insists that she did not attempt to mislead Judge Butler about the basis on which she was providing Toole legal services and that her statement "was a mistake" arising from exhaustion with the case.

The material facts of this claim are not in dispute. Respondent acknowledges she charged Toole for legal services in the dissolution case. Moreover, Respondent intended to collect payment for those legal services—initially, under Toole's promise to pay Respondent after the Ouray house sold and, later, via Respondent's claim in Toole's bankruptcy case. We thus have no trouble concluding that Respondent inaccurately represented to Judge Butler that she was "working pro bono on this case since October [2019]."[138] The only other element here is scienter: whether she had the requisite mental state to support a finding of misrepresentation. We find that she did. The term "pro bono" is widely understood—both within our profession

[137] *See In re Fisher*, 202 P.3d 1186, 1203 (Colo. 2009) ("[A] mental state of at least recklessness is required for [a Colo. RPC] 8.4(c) violation."); *see also People v. Rader*, 822 P.2d 950, 953 (Colo. 1992) (characterizing recklessness as closing one's eyes to facts that one has a duty to see or recklessly stating as facts things of which one is ignorant).

[138] Ex. S41 ¶ 3.

and out—to refer to the performance of legal work without charge.[139] In our view, her attempt to cast her misrepresentation merely as "[t]he inaccurate use of a Latin term"[140] is specious, given the ubiquitous use of the term and her decades of experience in the legal profession. We find that Respondent claimed that she worked pro bono not by mistake but to justify her failure to appear at the mediation, as she claimed to be overwhelmed by the litigation and financially strained because she had not been paid for her work. We thus find that Respondent made the misrepresentation with reckless disregard for its truth, thereby violating Colo. RPC 8.4(c).

IV. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[141] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[142] 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: By disobeying the June 2021 disciplinary order suspending her from the practice of law, Respondent violated her duty as an officer of the court to uphold the legal system. Respondent also violated her duty to the profession by engaging in the unauthorized practice of law. Finally, Respondent violated her duty of candor and the duties she owes as a legal professional when she falsely stated that she served as pro bono counsel in Toole's divorce proceedings.

Mental State: As discussed above, Respondent acted knowingly, at a minimum, by engaging in the unauthorized practice of law in violation of court orders. We also find that she recklessly made a misrepresentation to a tribunal.[143]

Injury: Respondent needlessly expended judicial resources by intervening in Toole's legal proceedings. Her involvement not only caused extra work for courts but also for Toole's opponents, which unnecessarily increased their legal fees and prolonged legal proceedings. Conant estimated that his client incurred at least $85,000.00 in excess fees to resolve the

[139] *See* Colo. RPC 6.1 ("Every lawyer has a professional responsibility to provide legal services to those *unable to pay*.") (emphasis added). Courts frequently give significant procedural latitude to pro bono lawyers to encourage such service to the public.

[140] Respondent's Hr'g Br. at 8.

[141] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).

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

[143] Although we find Respondent made her statement recklessly, a reckless state of mind is equivalent to a knowing state of mind for purposes of assigning sanctions under the ABA *Standards*. *See People v. Small*, 962 P.2d 258, 260 (Colo. 1998); Colo. RPC 1.0 cmt. 7A.

litigation over the Lyons property. We deem this injury serious. Moreover, Respondent's actions have seriously harmed Toole, who has been entangled in the litigation prolonged by Respondent's actions and is now a named defendant in case number 23CV14 that Respondent recently filed in Boulder County District Court. Respondent also caused actual injury to the legal system by flouting her suspension order. Finally, Respondent's demands to RBL on Toole's behalf caused actual harm to the reputation of lawyers because she advocated for Toole despite the order of suspension prohibiting her from doing so and leveraged her knowledge of Toole's litigation against Chris Mattair to advance her positions against both the Mattairs' claims in the bankruptcy matter.

ABA *Standards* 4.0-8.0 – Presumptive Sanction

Under the ABA *Standards*, the presumptive sanction for Respondent's misconduct is disbarment. ABA *Standard* 7.1 provides that disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system. Disbarment is also presumed under ABA *Standard* 8.1(a) when a lawyer intentionally or knowingly violates the terms of a prior disciplinary order, causing injury or potential injury to a client, the public, the legal system, or the profession. We decline to apply ABA *Standard* 8.1(b) as the People request because the People have not demonstrated that Respondent's false statement resulted in actual or potential injury to a client, the public, the legal system, or the legal profession.

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating factors 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.[144] As explained below, we apply five factors in aggravation, each of which we accord average weight in our discretion. We find that no mitigating factors are warranted.

Aggravating Factors

Prior Disciplinary Offenses – 9.22(a): We apply this aggravating factor considering Respondent's two prior instances of discipline.

In 2013, Respondent was suspended from the practice of law for six months, all stayed pending completion of a three-year period of probation, with conditions. She was disciplined for several types of misconduct. First, Respondent represented a client in several legal matters but also hired the client to clean her house and to work on her political campaign. Respondent planned to offset the money she owed her client against the legal fees her client owed her, but she never specified the hourly rate the client would be credited for her work, nor did she communicate in writing the basis or rate of her legal fees. Second, Respondent posted bond for the client and paid the client's rent and vehicle impound fees, which were not legitimate

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

litigation expenses, contravening the conflict of interest rules. Third, Respondent provided the client legal advice by filing the client's income taxes; she did so with the expectation that the client's tax refund would be applied to amounts the client owed her for posting bond. Respondent's personal interest in obtaining the tax refund created a significant risk that this interest would materially influence her tax and general legal advice.

In April 2021, Respondent was suspended for three years. She was found to have committed misconduct in four separate matters. In one domestic relations matter, she acted incompetently by failing to timely petition for review of a magistrate's order. She also threatened opposing counsel with a disciplinary complaint to gain an advantage in the litigation. In another case, Respondent failed to exercise basic competence when she ignored rules of civil procedure and rules governing the discovery process. In a third client matter, she acted incompetently by failing to follow rules of procedure, by failing to inquire who had authority to speak for and make decisions on behalf of her client, and by failing to conduct a basic investigation into the factual and legal basis for a complaint that she brought on her client's behalf. In that same matter, she took direction from a third party while neglecting to consult with her client about the matter; failed to provide her client with a fee agreement or any kind of writing describing her fee; impermissibly revealed information related to her representation of the client; filed a frivolous and groundless lawsuit; failed to make efforts to comply with legally proper discovery requests; and prejudiced the administration of justice. Finally, in her disciplinary proceeding, Respondent falsified an expert rebuttal report by knowingly misrepresenting that her expert authored and signed the report, even though the expert never wrote, reviewed, or signed the report.

Dishonest or Selfish Motive – 9.22(b): We apply this aggravating factor, noting that Respondent was motivated to preserve her funds that served as capital contributions into SA Lyons. We also find that Respondent sought to "buy in" on a business venture with Toole involving property related to Respondent's previous representation of Toole, at a time when Respondent knew that she would not be able to practice law for at least three years and knew that Toole was in a precarious financial state. Finally, we find that Respondent misrepresented to Judge Butler that she represented Toole pro bono in an effort to justify why she and Toole failed to appear at the mediation in the dissolution case.

Pattern of Misconduct – 9.22(c): Respondent coordinated with Toole in Toole's legal matters for more than one year and in multiple fora. We thus find that she engaged in a pattern of misconduct and apply this factor.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): Although Respondent claims to have taken responsibility for her misconduct, her professions ring hollow to us. We find that Respondent has refused to acknowledge the wrongful nature of her misconduct and thus apply this factor.

Substantial Experience in the Practice of Law – 9.22(i): Respondent has been a Colorado-licensed lawyer since 2005. At the disciplinary hearing, she testified that she began practicing law in New Jersey in July 1989. We therefore apply this factor.

Mitigating Factors

Personal or Emotional Problems – 9.32(c): Although we acknowledge that Respondent's suspension order and these disciplinary proceedings were likely a source of stress for her, we cannot conclude that any personal or emotional problems contributed to her misconduct.

Cooperation with Disciplinary Proceedings – 9.32(e): Respondent also asks us to apply this factor, but we are unable to point to any evidence that Respondent cooperated to any extent that merits mitigation.

Inexperience in the Practice of Law – 9.32(f): Respondent argues that although she has been practicing law since 1989, she is inexperienced in property law and bankruptcy law. But we see no nexus between Respondent's inexperience in bankruptcy or property law and her violation of her suspension order when she engaged in the unauthorized practice of law. Further, at this point in her career, Respondent is experienced enough to know that a lawyer must not make misrepresentations to a tribunal. We decline to apply this factor.

Character or Reputation – 9.32(g): Although Respondent asks us to apply this factor in her favor, she presented no testimony, evidence, or argument for us to consider. We decline to apply this factor as well.

Delay in Disciplinary Proceedings – 9.32(j): Respondent likewise requests that she be given mitigating credit for a delay in this disciplinary proceeding. She does so without pointing us to any delay that would lead us to conclude that this factor should be applied, however.

Remorse – 9.32(l): Respondent asks us to apply this factor, but when we asked her what would justify its application, Respondent replied, "That I'm here, absolutely." We are not persuaded that Respondent is remorseful for her conduct and thus refuse to apply this factor.

Remoteness of Prior Offenses – 9.32(m): Respondent argues that her misconduct for dishonesty was remote in time. We disagree that her prior discipline was remote, and we decline to apply this factor.

Analysis Under ABA *Standards* and Case Law

The Hearing Board observes the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[145] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases.'"[146] Though prior cases can inform through

[145] *See In re Attorney F.*, 2012 CO 57, ¶ 20; *see also In re Fischer*, 89 P.3d 817, 822 (Colo. 2004) (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).
[146] *Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

analogy, the Hearing Board is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.[147]

The ABA *Standards* discussed above point to a presumptive sanction of disbarment. Case law also calls for disbarment as the appropriate sanction when, as here, a lawyer knowingly practices law in violation of a disciplinary suspension order. For instance, in *People v. Redman*, the Colorado Supreme Court disbarred a lawyer who knowingly engaged in the practice of law despite being under a disciplinary suspension.[148] Later, in *People v. Zimmermann*, the Colorado Supreme Court made clear that disbarment, not suspension, is warranted when a lawyer who is serving a disciplinary suspension engages in the unauthorized practice of law.[149]

Although prior hearing board decisions are not binding,[150] we observe for purposes of consistency that a hearing board disbarred a lawyer in *People v. Maynard* for misconduct that included practicing law in violation of a disciplinary suspension order.[151] Likewise, in *People v. McMenaman*, a hearing board disbarred a lawyer who misrepresented his ability to provide legal services and engaged in the unauthorized practice of law while he was serving a disciplinary suspension, thereby violating Colo. RPC 3.4(c), Colo. RPC 5.5(a)(1), and Colo. RPC 8.4(c).[152]

Given this authoritative case law and the comparative nonbinding hearing board decisions, we find Respondent's misconduct warrants disbarment.

V. CONCLUSION

We are loathe to disbar a lawyer, and we take no joy in doing so. But Respondent engaged in the unauthorized practice of law while she was suspended—misconduct that both presumptively and by case law warrants disbarment. We also observe that Respondent's three-year suspension, which in part was premised on her dishonesty, has not sufficiently protected the public from another instance in which Respondent made a misrepresentation to a tribunal. Given this record, and considering the predominance of aggravating factors, we feel duty-bound to impose disbarment here.

---

[147] *Id.* ¶ 15.

[148] 902 P.2d 839, 840 (Colo. 1995).

[149] 960 P.2d at 88.

[150] *In re Roose*, 69 P.3d 43, 48 (Colo. 2003) ("The rationale of the Hearing Board in a particular case can neither serve as stare decisis precedent for future cases nor constitute the law of the jurisdiction.").

[151] 483 P.3d 289 (Colo. O.P.D.J. 2021).

[152] 461 P.3d 16 (Colo. O.P.D.J. 2020).

VI. ORDER

The Hearing Board therefore **ORDERS:**

1. **ANGELIQUE LAYTON**, attorney registration number **36480**, is **DISBARRED** from the practice of law in Colorado. The disbarment will take effect upon issuance of an "Order and Notice of Disbarment."[153]

2. To the extent applicable, Respondent **MUST** promptly comply with C.R.C.P. 242.32(b)-(e), concerning winding up of affairs, notice to current clients, duties owed in litigation matters, and notice to other jurisdictions where he is licensed or otherwise authorized to practice law.

3. Within fourteen days of issuance of the "Order and Notice of Disbarment," Respondent **MUST** file an affidavit with the Court under C.R.C.P. 242.32(f), attesting to her compliance with C.R.C.P. 242.32. As provided in C.R.C.P. 242.41(b)(5), lists of pending matters, lists of clients, and copies of client notices under C.R.C.P. 242.32(f) must be marked as confidential attachments and filed as separate documents from the affidavit.

4. The parties **MUST** file any posthearing motions **no later than Wednesday, May 3, 2023**. Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **no later than the date on which the notice of appeal is due**. Any response thereto **MUST** be filed within seven days.

6. Respondent **MUST** pay the costs of this proceeding. The People **MUST** submit a statement of costs **no later than Wednesday, April 26, 2023**. Any response challenging those costs **MUST** be filed within seven days.

[153] In general, an order and notice of sanction will issue thirty-five days after a decision is entered under C.R.C.P. 242.31(a)(6). In some instances, the order and notice may issue later than the thirty-five days by operation of C.R.C.P. 242.35, C.R.C.P. 59, or other applicable rules.

DATED THIS 19th DAY OF APRIL, 2023.

BRYON M. LARGE
PRESIDING DISCIPLINARY JUDGE

THOMAS J. OVERTON
HEARING BOARD MEMBER

J.D. SNODGRASS
HEARING BOARD MEMBER