***People v. DiAnn Elaine Lindquist*. 15PDJ039. November 8, 2016.**

A hearing board suspended DiAnn Elaine Lindquist (attorney registration number 36382) from the practice of law for three years. Lindquist's suspension took effect on December 13, 2016.

During a contentious divorce, Lindquist represented herself. In the course of that proceeding, she intentionally altered an email that she then submitted to the court as an exhibit in motions practice. She relied on that exhibit to advance her argument. The court ruled against her, so she appealed, referencing that same altered exhibit in her appellate brief. Through this misconduct, Lindquist violated Colo. RPC 3.4(b) (a lawyer shall not falsify evidence); Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and Colo. 8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice).

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:** DIANN ELAINE LINDQUIST	Case Number: **15PDJ039**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)	

During a contentious divorce, DiAnn Elaine Lindquist ("Respondent) represented herself. In the course of that proceeding, she intentionally altered an email that she then submitted to the court as an exhibit in motions practice. She relied on that exhibit to advance her argument. The court ruled against her, so she appealed, referencing that same altered exhibit in her appellate brief. This misconduct warrants a three-year suspension.

I. PROCEDURAL HISTORY

On June 1, 2015, Erin R. Kristofco, Office of Attorney Regulation Counsel ("the People"), filed a complaint against Respondent with Presiding Disciplinary Judge William R. Lucero ("the PDJ"). Through her counsel John S. Gleason, Respondent answered on August 5, 2015.[1] The matter was set for a two-day hearing to begin on January 20, 2016. At the parties' request, however, the PDJ continued the hearing pending appellate resolution of some material issues relevant to this disciplinary proceeding. The PDJ then stayed this proceeding until April 2016—again at the parties' request—pending resolution of a contempt matter before the trial court in the underlying case .

On April 13, 2016, the parties scheduled the hearing in this matter for August 23-24, 2016. On August 10, 2016, the PDJ denied Respondent's motion in limine to exclude an order that Judge Kandace C. Gerdes issued in the underlying dissolution case on June 25, 2014. The PDJ also denied Respondent's motion to exclude all testimony by Judge Gerdes concerning that order. The PDJ concluded that Judge Gerdes's order and related testimony were

[1] Respondent sought and was granted an extension of time to answer.

admissible under CRE 403 but not CRE 404(b), and he reserved a ruling on hearsay objections related to Judge Gerdes's order or testimony until the hearing.

At the August hearing, the PDJ, along with attorneys John M. Lebsack and Dean S. Neuwirth, presided as members of the Hearing Board. Kristofco represented the People, and Respondent attended with her counsel, John S. Gleason and Sara C. Van Deusen. During the hearing, the Hearing Board considered stipulated exhibits S1-S38, the People's exhibits 2, 5-7, and 9-10, and Respondent's exhibits A-B.[2] The Hearing Board heard testimony from Natalie Simpson, Daniel Krentz, Judge Kandace C. Gerdes, Donald Rowell, Diana Krentz,[3] Randy Burt, Amy Buckridge, Susan Fickess, and Respondent. At the conclusion of the hearing, the PDJ granted the parties leave to submit supplemental briefing about legal standards governing applicable mental states; the People submitted their brief on September 7, 2016, and Respondent filed her brief the next day.

II. FACTS AND RULE VIOLATIONS[4]

Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on May 18, 2005, under attorney registration number 36382. She is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[5]

Dissolution Proceedings

On July 6, 2011, Respondent and Daniel Krentz filed for divorce pro se in Denver District Court after about six years of marriage.[6] Cynthia Ciancio entered her appeared on Krentz's behalf on August 31, 2011,[7] and Diane Freed entered her appearance as Respondent's counsel on October 11, 2011.[8] Throughout their divorce proceedings, Respondent—a practicing family law and appellate lawyer—and Krentz—an implementation support specialist for Abbott Laboratories—sparred over disclosure of marital assets.

The parties, through their counsel, filed a stipulated separation agreement on January 26, 2012.[9] That agreement contains three provisions relevant in this matter. First, paragraph 10 provides that the agreement "shall not be modifiable except by its own terms,

[2] Some exhibits introduced into evidence contain Respondent's or Krentz's confidential financial information. Accordingly, on his own initiative, the PDJ **SUPPRESSES** the following exhibits: Exs. S9-S10, Ex. S13, and exhibit 3 to Ex. S20.
[3] Over the People's objection, on August 1, 2016, the PDJ granted Respondent's request to permit Diana Krentz to testify by telephone.
[4] The findings of fact here are drawn from testimony at the disciplinary hearing, unless otherwise noted.
[5] *See* C.R.C.P. 251.1(b).
[6] Stip. Facts ¶ 1; Ex. S2 ¶ 2.
[7] Stip. Facts ¶ 2.
[8] Stip. Facts ¶ 3.
[9] Stip. Facts ¶ 4.

by operation of law, or by written agreement of the parties with approval by the Court."[10] Second, paragraph 17—seemingly at odds with paragraph 10—states that the agreement "cannot be altered, amended, modified or terminated except by an instrument in writing executed by both parties or an Order of the Court."[11] Third, paragraph 25.7 establishes that the couple "will split (50/50) the marital portions of the Abbott Labs 401(k) and pension"; that they will "split (50/50) the cost of any work done by . . . any financial specialist necessary to determine the exact amount of [Respondent's] interest and ensure that [Respondent's] interest in the 401(k) and pension funds are secured and available to her"; and that until a decree of dissolution was entered, they will "forego . . . secur[ing] [Respondent's] marital interest in the Abbott 401(k) and Abbott pension funds."[12] The court approved the separation agreement on January 30, 2012, and entered a decree of legal separation.[13]

On February 23, 2012, Ciancio withdrew as counsel for Krentz, who continued on pro se.[14] About a month later, Freed filed a "Stipulation to Adopt Exhibit 1," requesting that the court adopt the parties' final division of personal property.[15] Attached to that stipulation was a spreadsheet listing various pieces of furniture either acquired or used during the marriage, apportioning to each party roughly half of the value of the furniture in total.[16] The court approved that stipulation.[17] About four months thereafter, Freed withdrew as Respondent's counsel.[18]

In summer 2012, Respondent became suspicious that Krentz had concealed money from her during the separation proceedings after finding a bank statement in Krentz's desk drawer for an account at Bank of America that he had never disclosed to her. "I knew that there were hidden assets," she ruminated, though she also said that she had "no clue" where those funds were located. Respondent moved to reopen the separation agreement in autumn 2012 and concurrently issued subpoenas to several financial institutions in a quest to uncover additional money.

The court held a hearing on February 11, 2013, to address reallocation of undisclosed marital assets, among other things.[19] Based on arguments and testimony at that hearing, the court issued an order dated February 28, 2013, ruling that the separation agreement

---

[10] Ex. S2 ¶ 10.
[11] Ex. S2 ¶ 17.
[12] Ex. S2 ¶ 25.7. Attorney Natalie Simpson, whom Krentz later retained, described a "marital portion" or "marital share" of a 401k plan as any money put into the 401k during the marriage, as well as any appreciation. *See also* Ex. S10 (in which Respondent explains that "[u]nder Colorado law, the *increased value* of pre-marital separate property after the date of the marriage is marital property").
[13] Ex. S1.
[14] Stip. Facts ¶ 5.
[15] Ex. S4.
[16] Ex. S4.
[17] Ex. S1.
[18] Stip. Facts ¶ 6.
[19] Ex. S3 at 00069.

continued to be fair and equitable, save for Krentz's failure to disclose his Bank of America account, which held a balance of $14,723.12 immediately prior to entry of the separation decree.[20] Respondent was awarded fifty percent of the value of that account.[21] But Respondent's requests to reallocate other assets—alleged undisclosed bonuses and profit-sharing, Krentz's timeshare, and funds that he had placed in an account with Morgan Stanley—were denied.[22]

At the time of the reallocation hearing, Respondent testified, she had not received documents from every subpoena that she had issued. She resolved to keep pursuing those leads and, perhaps, to appeal the reallocation order, fueled by her belief that Krentz had "stashed" about $500,000.00 somewhere. Krentz, on the other hand, said that he "[didn't] care if she looked for more money because [he] didn't have any more."

Also in early 2013, Respondent and Krentz received an offer to buy the marital home. To persuade Respondent to sell the property at a reduced price, Krentz agreed to give her an additional $5,000.00 of the net proceeds from that sale.[23] Though this bargain was reduced to writing, neither party submitted the document to the court for approval.

The Agreement Dated April 19, 2013

Late on April 19, 2013—the night before Respondent moved out of the marital home and just two days, she said, before she planned to file her notice of appeal of the reallocation order—Krentz stopped by the house. He had moved into a furnished condominium almost a year prior, leaving the couple's furniture in the house to stage it for showings.

The two had "some drinks," recalled Krentz, while they discussed how to move the furniture out of the house. According to Krentz, he had no use for the furnishings and so offered to give Respondent his items. But according to Respondent, when Krentz appeared that night he confessed that he had failed to arrange for the moving and storage of his pre-allocated items, so he begged her to take them. Despite these discrepancies, they both agree that Krentz gave Respondent every item that had been designated as his, with the exception of a bar-b-que grill.

They also agree that they signed a one-sentence handwritten agreement, jotted that same night, at the bottom of a version of the previously filed furniture allocation spreadsheet. That agreement read, "DiAnn Lindquist will not prosecute an appeal regarding undisclosed assets and as consideration receives all marital assets claimed by Daniel Krentz."[24] They do not, however, agree about the proper interpretation of that agreement.

[20] Ex. S3 at 00071; *see also* Exs. A-B. The court entered a decree of dissolution on the same date.
[21] Ex. S3 at 00071.
[22] Ex. S3 at 00071.
[23] Ex. S33.
[24] Ex. S5.

As Krentz remembered, the handwritten agreement simply memorialized his offer to relinquish any claim to the furniture, though he conceded that he did not review the handwriting carefully. He simply signed the page, he said, to document the gift of furniture, in recognition that Respondent wanted to protect herself. He did not recall her promise to forgo an appeal, and he certainly had no intention, he said, of "sign[ing] away" his "entire life."

But Respondent told a different story. She said that after they had reallocated the furniture, they began discussing other assets. Krentz asked how much money she had located from issuing the subpoenas. She answered that she had found about $150,000.00 but thought she would eventually uncover more. He laughed a little but then told her that he wanted the litigation to end, and he pressed her on what it would take to bring the case to a close and call off the appeal. She replied that she would drop the appeal if he would give her the rest of the assets that had not yet been distributed. She said that he agreed. With no other materials available, she testified, she just transcribed their agreement "as fast as I could on the piece of paper that we were working with for moving purposes." In her mind, this document reallocated to her the only outstanding undistributed asset—the entire marital portion of Krentz's 401k. "The only reason I didn't put 401k in there" and instead wrote "all marital assets," she testified, was "just in case there was anything else."[25]

Respondent did not file this handwritten note with the court, nor did she seek court approval of the modification to the separation agreement.

The QDRO

In June 2013, Respondent hired Donald Rowell, a lawyer and the owner of QDRO Colorado, to prepare two Qualified Domestic Relations Orders ("QDROs"): one for Krentz's 401k, and one for Krentz's pension.[26] QDROs—which, under federal law governing employee benefit plans, are required in divorce proceedings when dividing or assigning retirement funds—must be drafted to comply with the rules of the employer's plan in order to allocate benefits to an alternate payee. Before beginning any work on the QDROs, Rowell requested from Respondent the "part of the divorce decree or marital settlement agreement that discusses the retirement plans being divided per QDRO."[27] In response, Respondent provided Rowell with a copy of paragraph 25.7 of the settlement agreement, which provided that the couple would "split (50/50) the marital portions of the Abbott Labs 401(k) and pension."[28] She never sent Rowell the April 19 handwritten agreement.

[25] Respondent testified that she never interpreted the April 19 agreement to include the proceeds from the sale of their home or the full marital share of Krentz's pension (which was different from his 401k account).
[26] *See* Ex. S6. Rowell was paid with funds that Respondent and Krentz withdrew from their joint checking account.
[27] Ex. S6.
[28] Ex. S6; *see also* Ex. S2 at 00047-48.

On July 12, 2013, Rowell emailed Respondent, promising to get to work on the QDROs as soon as he received payment. He also remarked that Krentz had contacted him about a QDRO for another of Krentz's ex-wives, Diana Krentz. Finally, he said, somewhat cryptically, "I don't want to get in the middle of any issues the two of you [Respondent and Krentz] might have. I'm a bit uncomfortable with this, so I will only confer with you on the QDRO matter from this point forward."[29] Rowell explained at the disciplinary hearing that the calls he had fielded from Krentz were "aggressive," and he mused that "there are just some people . . . he's trouble, I could sense it."

Five days later, Rowell sent to Respondent a draft QDRO for the marital portion of Krentz's 401k.[30] Krentz was not copied. That draft, which was incomplete, allocated fifty percent of the marital share of Krentz's 401k to Respondent.[31] Respondent replied to Rowell the same day—again without including Krentz—with the following response: ". . . $118,000 was Dan's separate property (Diana's money is in there, too) on the date of marriage and the value had increased to $252,000 by the date of the divorce. Therefore, the marital value of the 401(K) is the difference between $118,000 and $252,000."[32] Rowell testified that he used this information to revise the QDRO, a draft of which he sent only to Respondent on August 2, 2013.[33] That draft allocated to Respondent $134,000.00 of Krentz's 401k: 100 percent of the marital share, as Respondent had calculated it.[34]

Respondent was pleased with the revision. She replied—without copying Krentz—"This version of the [401k] QDRO is completely correct. However, there is no way my ex will sign it, so I'll have to send it to the judge directly for signature. That may change your format a bit, so please send me the final version and I will file it ASAP."[35] Rowell explained to her that he would first need to send the draft to Abbott Labs' plan administrator for approval before she could file the 401k QDRO with the court.[36] In early September 2013, Respondent again contacted Rowell to express her approval, with one caveat. She wrote, "My only concern is that you have placed an 'approval as to form' at the bottom. [Krentz] will never sign it, so I think it would be best to remove the spot for our signatures and send it directly to the judge for signature after the Plan approves it."[37] As Respondent explained at the hearing, she anticipated that Krentz would balk at signing this 401k QDRO because, during their marriage, she had watched as he had laughingly thrown away other QDROs from Diana Krentz.

---

[29] Ex. S7 at 00535. Notwithstanding this stated intent, Rowell did communicate with Krentz via email in mid-July 2013 about preparing a QDRO for Diana Krentz. *See* Ex. S27 at 00606; Ex. S32 at 00547-48; Exs. S34-S37.

[30] *See* Ex. S9. Rowell chose to prioritize work on the 401k QDRO first and focus on the pension QDRO later "so as to keep [the process] organized and less complicated and confusing." Ex. S10 at 00582.

[31] Ex. S9 at 00577.

[32] Ex. S10 at 00581.

[33] Ex. S10 at 00581.

[34] Ex. S10 at 00585. Neither the facts nor the testimony illuminate why Rowell then attributed that $134,000.00—the full marital share—to Respondent.

[35] Ex. S11.

[36] Ex. S11.

[37] Ex. S12 at 000268.

Rowell did not remove the signature block, as Respondent had instructed; his "standard practice" is to include signatures, he said, because they confirm that the parties have read and agreed to the QDRO's terms. For her part, Respondent reevaluated her plan to submit the 401k QDRO directly to the court without signatures, as her relationship with Krentz had thawed somewhat and she concluded that it would be preferable to avoid moving to compel him to affix his signature.

In late August 2013, Rowell submitted the draft 401k QDRO to Holly Edwards of QDRO Consultants, which reviews and administers QDROs related to Abbott Labs' retirement plans.[38] On November 18, 2013, Edwards sent a letter to Rowell, copying Respondent and Krentz, in which Edwards approved the draft 401k QDRO and requested that Rowell submit an original court-certified copy of the 401k QDRO to her for processing after it had been executed by the court.[39] Edwards concluded, "Please note, our office will review and respond in writing to all parties' [sic] in this case within approximately 30 days of the receipt of any Order whether amended, draft or executed."[40]

Respondent was under the misimpression, based on Edwards's letter, that QDRO Consultants had demanded the return of a court-approved 401k QDRO within thirty days, so she approached the task of obtaining Krentz's signature as a matter of urgency. Between November 18 and December 3, 2013, she said, she asked Krentz to meet her on several occasions, though he rebuffed each request with an excuse. But Respondent was persistent, and Krentz finally agreed to meet in a Walgreens parking lot in Loveland on December 3. Their accounts of that meeting differ significantly.

Respondent described the following interaction. She said that Krentz was already at the Walgreens by the time she drove in and parked her car. Both she and Krentz exited their cars as it began to snow. She handed him the 401k QDRO and asked him whether he intended to sign it. Krentz wanted to read it; Respondent retorted that the document was "just like every other one you've gotten so far." But Krentz said he had not seen the 401k QDRO, so he took it back to his car. "It took a long time," about twenty minutes, Respondent recalled. At some point she walked to his car and he asked her questions about certain "boilerplate" language. Respondent returned to her car and Krentz followed about five minutes later, announcing that he would not sign. She demanded return of the document. But then he recanted and said he would sign, but only if they could make a copy of the 401k QDRO in Walgreens. They went inside to look for a copier, could not locate one, and walked back outside. Krentz then started to yell, and Respondent retreated to her car. Krentz began pounding on her car window, screaming, "You f-ing golddigger!" She rolled down her window and threatened to call the police, so Krentz stopped pounding on her car and shouted "Give me that damn thing!" She gave him the 401k QDRO, he signed it on the

[38] Ex. S30; Ex. 9.
[39] Ex. S30.
[40] Ex. S30.

hood of her car, which was wet with snow, and he threw it on the ground. She retrieved the signed 401k QDRO, got back in her car, and left immediately.

Krentz, on the other hand, recalled the following events. He arrived at the Walgreens, parked his car, and walked toward Respondent, who remained in her car. She handed him a document and ordered him to sign it. He said he had never seen the paper before and asked what it was. Respondent called him a liar, told him that he had seen a copy of the document, and vowed to take him back to court if he refused to sign. He raised his voice, and Respondent began to scream at him, threatening him with a contempt citation. Worried that the police would show up, he began to walk away. He reconsidered, though, when he began to calculate the attorney's fees that he might incur if she followed through with her threats. So, he signed the 401k QDRO "under duress" without reading it, reasoning that document was a "harmless form" that Respondent had characterized as "a draft" and necessary to "keep the [QDRO] process going."

After Krentz signed, Respondent drove straight to Denver and filed the 401k QDRO with the court. The QDRO allocated to her $134,000.00 of Krentz's 401k, which was 100 percent of the marital share.[41] The court approved the 401k QDRO, adopted it as a court order on December 9, 2013, and sent it to the parties.[42]

Krentz explained that he first learned of the reallocation—a "surprise," he said—when he received the court's order by mail.[43] On December 19, 2013, he emailed Rowell, asking for his "findings for the [401k] QDRO" and questioning how he arrived at the final figure.[44] Rowell did not respond. Nor did he return Krentz's telephone calls. Instead, Rowell emailed Respondent—but not Krentz—on December 20, 2013. Attaching the draft 401k QDRO approved by the plan, he wrote,

> The attached 401k QDRO is now ready for filing. You and Dan should review the QDROs [sic] very carefully to ensure that it is drafted as you desire. A QDRO is a very important document, and great care should be exercised to ensure that the terms, as drafted, comply with the divorce decree and the intent of the parties.[45]

Meanwhile, Krentz requested—and Edwards provided to him—copies of both QDROs.[46]

Krentz testified that he realized he was "being railroaded" by Respondent and "completely shut out" by Respondent and by Rowell, who eventually threatened to call the police if Krentz continued to bother him. When, in January 2014, Krentz received a copy of a

[41] Ex. S13 at 00059.
[42] Ex. S1.
[43] *See* Ex. S38.
[44] Ex. S14.
[45] Ex. S15 (emphasis in original omitted).
[46] Ex. S31.

letter from Edwards to Rowell qualifying the court-ordered 401k QDRO and interpreting that document to allocate $134,000.00 of his 401k to Respondent, Krentz resolved to protest the allocation.[47] In later correspondence with Respondent, Krentz again questioned the calculations. Respondent replied:

> Regardless of what you think the figures should be, you signed away all your rights to the marital portion of the 401(K) in April 2013, in exchange for my agreement not to sue you for ripping me off for more than $150K in marital assets. Although the amount I'm finally getting doesn't even come close to what you stole from me, it will at least bring us closer to a fair settlement.[48]

Krentz's Motion for Relief From Judgment Under C.R.C.P. 60(b)

Krentz hired domestic relations attorney Natalie Simpson, who filed a "Verified Motion for Relief from Judgment Pursuant to C.R.C.P. 60(b)" on March 31, 2014, arguing that Respondent, an attorney, took "unfair advantage" of Krentz, who never actually agreed to the 401k reallocation.[49] Simpson noted that the April 19 handwritten agreement was jotted on a piece of paper referencing furniture, it does not mention Krentz's 401k, and it was not filed with the court as a modification to the separation agreement. She also contended that, save for one email, Krentz never received any communication from Rowell about the 401k QDRO and was not apprised of its contents. And she maintained that Krentz signed the 401k QDRO only because Respondent threatened him with court action. On these grounds, Simpson requested relief from the order allocating to Respondent the full marital share of Krentz's 401k.

Respondent submitted a brief in opposition on April 28, 2014.[50] Two pillars of her argument were (1) that Krentz communicated with Rowell prior to signing the 401k QDRO on December 3, 2013, which vitiates his claim of surprise or excusable neglect; and (2) that Krentz did not timely appeal the order approving the 401k QDRO within the twenty-one days following its entry on December 9, 2013. Respondent attached nine exhibits to support her position that Krentz's motion should be denied. Testifying at the disciplinary hearing, she said that she prepared the attachments to the response brief by herself, late at night, drawing from over 120 emails in her Yahoo email account in order to cut and paste email headers and content into Microsoft Word documents. She attempted, she noted, to excise extraneous information from these emails, including lengthy disclaimers. In this process of scrolling and cutting and pasting, she asserted, she inserted Krentz's email address into the recipient field on the email from Rowell to Respondent dated December 20, 2013.[51] The error, which made it seem as though Krentz had received the email (though actually he had not), was a mere mistake and an accident, she claimed, resulting from flaws in the Yahoo

[47] *See* Exs. S16 & S17.
[48] Ex. S18.
[49] Ex. S20.
[50] Ex. S21.
[51] *See* Ex. S21 at Ex. 9; *compare with* Ex. S15.

email format and her own ineptitude with computers. Respondent referred to this exhibit in her C.R.C.P. 60(b) response.[52]

Simpson, on Krentz's behalf, submitted a reply brief on May 12, 2014.[53] Simpson acknowledged at the disciplinary hearing that she did not notice, and thus did not raise as an issue, any errors or discrepancies in the exhibits to Respondent's response brief.

The matter was assigned to Judge Kandace C. Gerdes, who testified that she spent "conservatively, fifty hours" deciding the motion. On June 25, 2014, Judge Gerdes found that Respondent had engaged in "extrinsic fraud" by submitting the 401k QDRO in the amount of $134,000.00 rather than half that amount, and also that the court-approved 401k QDRO should be set aside "to accomplish justice."[54] Judge Gerdes testified that after reviewing the full file and the case law—though without holding an evidentiary hearing—she determined that the 401k reallocation to Respondent was fraudulent because it was inconsistent with the manner in which the parties had treated other assets; not in line with the 50/50 split contemplated by the separation agreement; unsupported by the April 19 agreement; and the product of a process that had excluded Krentz. This finding, Judge Gerdes testified, was not premised on the alteration of the email dated December 20, 2013, which was attached as an exhibit to Respondent's C.R.C.P. 60(b) opposition.

Respondent appealed. In her opening brief, filed on February 17, 2015, she referenced the modified email of December 20, 2013, which she had included in her designation of record.[55] Just two months thereafter, on April 14, 2015, the People deposed Respondent in this matter. It was the night before that deposition, Respondent said, when she first realized that exhibit 9 to her C.R.C.P. 60(b) response brief (specifically, the header to the email of December 20, 2013) was incorrect.[56] As of May 9, 2015, however, Respondent had not alerted Simpson to the inaccuracy, nor had she informed the Court of Appeals, even though her appeal—in which she referenced the altered email—was currently pending in that court.[57] On January 21, 2016, the Court of Appeals declined to address Judge Gerdes's finding of extrinsic fraud but affirmed her finding that the 401k QDRO should be set aside to accomplish justice.[58]

---

[52] *See* Ex. S21 at 8-9.
[53] Ex. S22. Around the same time, Respondent urged Edwards to immediately distribute to her the $134,000.00 from Krentz's 401k, notwithstanding Krentz's pending C.R.C.P. 60(b) motion. *See* Ex. 2. Respondent wrote, "If Mr. Krentz prevails in this matter, the Court will order him to have a new QDRO prepared and he will have to collect the money from me." Ex. 2.
[54] Ex. 6 at 7-8.
[55] Ex. S24 at 15.
[56] *See* Ex. S21 at Ex. 9.
[57] *See* Ex. 5.
[58] Ex. 6 at 7.

Rule Violations

The People argue that Respondent violated three rules during her dissolution proceedings: Colo. RPC 8.4(c), which interdicts conduct involving dishonesty, fraud, deceit or misrepresentation; Colo. 8.4(d), which proscribes conduct prejudicial to the administration of justice; and Colo. RPC 3.4(b), which prohibits lawyers from falsifying evidence.

We begin with the People's claim that Respondent ran afoul of Colo. RPC 8.4(c) when she used the parties' previously filed furniture list to reallocate to herself the full marital share of Krentz's 401k, thereby tricking Krentz into believing that he was simply giving her furniture. These allegations about the April 19 agreement require us to divine, as best we can, the motivations, intentions, and interpersonal dynamics between these two ex-spouses caught up in an occasionally contentious divorce. What bargain were they trying to strike? Did they see eye-to-eye at the time, only for one to shift narratives later when expedient? Or, from the beginning, did they interpret the handwritten note differently? Was there ever a meeting of the minds?

Evidence and inference lend some support to each party's position. On the one hand, Respondent's position is buttressed by the plain language of the note that she drafted—that she "will not prosecute an appeal regarding undisclosed assets," in exchange for "all marital assets" claimed by Krentz. This language could be construed as showing that the parties desired the agreement to be read expansively, not just to dispose of furniture.[59] That language also squares with Respondent's subsequent conduct: her decision not to appeal the trial court's reallocation order indicates that she believes she received something of commensurate value in exchange for forgoing the appeal. Further, given that Krentz had once concealed marital property, it is not implausible that other assets remained undisclosed. One can surmise that, after some drinks, he agreed to the bargain in concept and repudiated the agreement only after he realized the monetary value of his concession.

On the other hand, Krentz's narrative is supported by some evidence. For example, Respondent's failure to file the April 19 agreement with the court is telling. Though not all modifications to the separation agreement were submitted to the court, many were.[60] Yet this one handwritten sentence—which purports to reallocate not just the full marital portion of Krentz's 401k but "all marital assets" and thus substantially rewrites the separation agreement—was not. The absence of this document in the court record suggests either that Respondent initially did not construe the document so broadly or that she wished to avoid court oversight. Equally telling is that Respondent did not send the April 19 handwritten agreement to Rowell in July 2013, when he requested that she give him the document governing division of Krentz's retirement plan assets.

---

[59] Ex. S5.

[60] As noted above, the separation agreement could be read to mandate submission to the court of any modification to its terms, but it also could be read to list court approval as just one of several avenues to modify the terms.

We also question why, if Respondent originally intended this one-sentence document to confer on her "all marital assets," she refrained from pushing for the full marital share of Krentz's pension, or for all of the proceeds from the sale of the couple's home. That she never did so indicates she did not initially view this agreement as sweepingly as its language would suggest. Finally, the evidence does not show Respondent explicitly advancing her interpretation of the agreement until August 2, 2013—after Rowell had parsed Respondent's email as an instruction to allocate $134,000.00 to her.[61] Perhaps she seized on Rowell's figures in the 401k QDRO and looked backward to the April 19 agreement to justify the reallocation.

The People's burden of proof to establish a violation of a Rule of Professional Conduct is "clear and convincing" evidence.[62] That standard means that the People must present "evidence which is stronger than a mere preponderance; it is evidence that is highly probable and free from serious or substantial doubt."[63] When we consider the entries on both sides of this ledger, we conclude too many questions remain in this he-said-she-said to find, without serious or substantial doubt, that Respondent tried to mislead Krentz when they executed the April 19 agreement. We thus cannot find by clear and convincing evidence that her conduct in this regard violated Colo. RPC 8.4(c).

Next, we turn to the People's allegations that Respondent's handling of the 401k QDRO violated Colo. RPC 8.4(c) and 8.4(d). Specifically, the People allege a violation of these rules premised on Respondent's submission of the 401k QDRO for approval as a court order, even though Krentz was unaware that the document called for a reallocation to Respondent of the full marital share of his 401k. As with the allegations premised on the April 19 agreement, however, the evidence on this issue rests near equipoise, and we did not find either interlocutor particularly credible. Therefore, we cannot find a violation of either rule, by clear and convincing evidence, based on these factual grounds.

We reach this conclusion having taken into account Respondent's evident willingness, if not strategy, to cut Krentz out of the 401k QDRO drafting process. From mid-July 2013 onward, Respondent and Rowell excluded Krentz entirely from their correspondence. And Respondent twice remarked to Rowell via email that Krentz would never sign the document.[64] Meanwhile, Rowell accepted Respondent's representations unquestioningly, and Respondent used that lack of scrutiny to her advantage.

But notwithstanding his lack of involvement, Krentz signed the document, which was prominently titled "Qualified Domestic Relations Order."[65] Why he did so remains a question we cannot answer clearly and convincingly. Neither Respondent's nor Krentz's account of

[61] Ex. S11.
[62] C.R.C.P. 251.18(d).
[63] *Metro Moving & Storage Co. v. Gussert*, 914 P.2d 411, 414 (Colo. App. 1995) (internal quotations omitted).
[64] *See* Exs. S11 & S12.
[65] Ex. S13.

their parking lot meeting on December 3, 2013, seems compelling. To us, it does not ring true that Krentz would sign a 401k QDRO either trusting Respondent's characterization of the document or under threat of contempt. Krentz knew that his 401k was a valuable asset—after all, he had prior experience with QDROs—and the stakes were too high to sign such a document cavalierly. Nor do we credit Respondent's story. Her narrative flies in the face of our understanding of human nature: we cannot fathom what might impel Krentz to scour the 401k QDRO for twenty minutes, refuse to sign, pound on Respondent's car before affixing his signature, and then embark on a several-month journey to unwind the arrangement.

Because we cannot string together either a clear or convincing sequence of events, we are left only with conflicting narratives, both of which end in a QDRO signed by Krentz. With this as our only solid, uncontested evidence, we decline to find a violation of Colo. RPC 8.4(c) or 8.4(d) for Respondent's conduct regarding the 401k QDRO.[66]

Finally, we examine the People's allegations that Respondent violated Colo. RPC 3.4(b), 8.4(c), and 8.4(d) by altering the email dated December 20, 2013, to create an exhibit; attaching that exhibit to and relying on it in her response to Krentz's C.R.C.P. 60(b) motion; designating the same falsified document in her record on appeal; and referring to that exhibit in her appellate brief.

As previously discussed, Respondent acknowledged that she had added Krentz's email address in the email header's recipient line during her work to compile and streamline exhibits to her response. But she staunchly denied doing so intentionally, instead insisting that the alteration was mistake—a product of late-night manipulation of email by a digital novice. We found this explanation contrived and too coincidental, given that the supposed mistake resulted in the addition of Krentz's email address placed neatly next to Respondent's own address in the header of the email dated December 20, 2013, among the many emails through which Respondent said that she scrolled. Indeed, this explanation was very difficult to accept, since Respondent's response to the C.R.C.P. 60(b) motion relied on the email to argue that Krentz had received timely notice from Rowell about the status of the 401k QDRO.

In our view, though, Respondent's defense fell apart entirely once the People introduced uncontested evidence of three other alterations to emails included in her

[66] We considered Judge Gerdes's testimony that she concluded Respondent had committed fraud on the court by securing Krentz's sign-off on the 401k QDRO, even though Krentz was unaware of the reallocation. We found Judge Gerdes's testimony to be thoughtful, detailed, and well-considered. But we also recognize that her order was affirmed not on her finding of extrinsic fraud but rather on her finding that the court-approved QDRO should be set aside to accomplish justice. And we take into account that other courts' findings are not binding in these proceedings. *See In re Egbune*, 971 P.2d 1065, 1067 (Colo. 1999) (noting that a trial court's ruling did not bind a hearing board because proof in civil actions typically is by a preponderance of the evidence, while in disciplinary proceedings proof is by clear and convincing evidence).

exhibits to her C.R.C.P. 60(b) response.[67] Each alteration showed the name "Dan" in the email salutation, even though Krentz was not actually copied on any of the original three emails. In the first, Rowell emails Respondent on July 17, 2013, attaching a draft QDRO and requesting an opportunity to discuss his concerns. Krentz is not addressed in the original email, but the email purportedly quoted in the altered exhibit reads "Hi DiAnn and Dan."[68] In the second, Rowell emails Respondent on August 28, 2013, noting that the draft QDRO had been submitted to the plan administrator. Krentz is not addressed in the original email, but the email in the altered exhibit reads "Hi Diann and Dan."[69] In the third, Rowell emails Respondent on January 24, 2014, attaching the approval letter of the 401k QDRO and requesting any corrections "ASAP."[70] Krentz is not addressed in the original email, but the email in the altered exhibit reads "Hi, DiAnn and Dan."[71] As with the doctored email of December 20, 2013, Respondent cited these three emails to support her argument that Krentz had passed up several opportunities to review and object to the 401k QDRO.[72] At the disciplinary hearing, Respondent did not credibly explain why Krentz's name appeared in the salutations in the exhibits she created other than to say, alternately, that she did not know and that she "apparently" did add in his name.

These three other meticulous alterations in Respondent's email exhibits lead us to conclude that the addition of Krentz's email address to the email dated December 20, 2013, was not an innocent accident, but rather an intentional falsification to support Respondent's arguments in opposition to Krentz's C.R.C.P. 60(b) motion.[73] If one neat insertion of Krentz's email address strains credulity, three additional alterations—all with Krentz's name in the emails' greetings, and all used to support the same argument to the court—defy any logical explanation other than that Respondent was consciously pursuing a self-serving objective.

Accordingly, we find that Respondent violated Colo. RPC 3.4(b) and 8.4(c) by altering the email dated December 20, 2013, when preparing it as an exhibit to her C.R.C.P. 60(b) response brief, and by relying on that exhibit to bolster her notice argument. We also find that she violated Colo. RPC 3.4(b) and 8.4(c) by designating the same falsified email in her record on appeal and relying on that email to support her appellate briefing. This same misconduct contravened Colo. RPC 8.4(d) because Respondent's doctored exhibit was intended to mislead the district court and the Court of Appeals, jeopardizing a just resolution of the matter.

---

[67] Presumably, the People were given these original documents by Respondent or Rowell during the course of discovery.

[68] *Compare* Ex. S9 *with* Ex. S21 at Ex. 8.

[69] *Compare* Ex. 9 *with* Ex. S21 at Ex. 8.

[70] Ex. 10.

[71] *Compare* Ex. 10 *with* Ex. S21 at Ex. 9.

[72] *See* Ex. S21 at 9 (relying on the attached exhibits and writing in her C.R.C.P. 60(b) response, "Given the number of opportunities and length of time that Husband had to review the QDRO, he cannot now claim surprise or excusable neglect for the purposes of Rule 60(b).").

[73] These alterations were not charged in the People's complaint. As such, we do not consider them as separate acts violative of the Rules of Professional Conduct but rather as evidence that supports a finding as to Respondent's state of mind when she altered the email of December 20, 2013.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[74] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[75] When imposing a sanction after a finding of lawyer misconduct, a hearing board must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the lawyer's misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

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

Duty: Respondent violated her duty to the legal system and to the public. Lawyers are officers of the court; it is axiomatic that they must not create or use false evidence.[76] Respondent also flouted her duty to the public to maintain personal integrity when she engaged in dishonest conduct.[77]

Mental State: Respondent altered the email of December 20, 2013, with the conscious objective to mislead the court by purporting to show that Krentz was on notice of the contents of the 401k QDRO. She acted with intent.[78]

Injury: By adding Krentz's email address to the email of December 20, 2013, and by submitting that altered email as evidence in proceedings before the trial and appellate courts, Respondent caused actual harm to the reputation of the bar and the integrity of the legal profession, as she subverted the public expectation that attorneys behave honestly and abide by the rule of law in litigating disputes. Such conduct seriously adversely reflects on her fitness to practice law, because it represents "an affront to the fundamental and indispensable principle that a lawyer must proceed with absolute candor towards the tribunal. In the absence of that candor, the legal system cannot properly function."[79] This is why Respondent's actions also seriously threatened to taint the dissolution proceeding and, by extension, seriously imperiled Krentz's interests: had Judge Gerdes been swayed by

---

[74] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).
[75] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).
[76] ABA *Standard* 6.0.
[77] *See In re Cleaver-Bascombe*, 986 A.2d 1191, 1200 (D.C. 2010) ("Lawyers have a greater duty than ordinary citizens to be scrupulously honest *at all times*, for honesty is 'basic to the practice of law . . . . Every lawyer has a duty to foster respect for the law, and *any* act by a lawyer which shows disrespect for the law tarnishes the entire profession.") (citations omitted).
[78] ABA *Standards* § IV, Definitions ("'Intent' is the conscious objective or purpose to accomplish a particular result.").
[79] *In re Caranchini*, 956 S.W.2d 910, 919-20 (Mo. 1997), *as modified on denial of reh'g* (Dec. 23, 1997); *see also In re Williams*, 362 P.3d 816, 824 (Kan. 2015) (concluding that a respondent "engaged in conduct that adversely reflects on his fitness to practice law" by, among other things, fabricating evidence in a disciplinary investigation).

Respondent's falsified exhibit, she might have ruled against Krentz and awarded Respondent the full marital share of his 401k.[80]

ABA *Standards* 4.0-7.0 – Presumptive Sanction

Disbarment is the presumptive sanction for Respondent's misconduct in this case, as set forth in two ABA *Standards*. Respondent's violation of Colo. RPC 8.4(c) (dishonesty, fraud, deceit, or misrepresentation) implicates ABA *Standard* 5.11(b). That standard calls for disbarment when a lawyer engages in intentional conduct that involves dishonesty, fraud, deceit, or misrepresentation and that seriously adversely reflects on the lawyer's fitness to practice.[81] Likewise, ABA *Standard* 6.11, which governs Respondent's violations of Colo. RPC 3.4(b) (falsifying evidence)[82] and Colo. RPC 8.4(d) (conduct prejudicing the administration of justice), provides that disbarment is typically warranted when a lawyer, with the intent to deceive a court, makes a false statement, submits a false document, or improperly withholds material information, thereby causing serious or potentially serious injury to a party or causing a significant or potentially significant adverse effect on the legal proceeding.

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations that may justify an increase in the degree of the sanction to be imposed, while mitigating circumstances include any factors that may warrant a reduction in the severity of the sanction.[83] We apply four aggravating factors, one of which we weigh heavily, and three mitigating factors, one of which we find significant.

Aggravating Factors

Dishonest or Selfish Motive – 9.22(b): Respondent deliberately doctored an email and attached it as an exhibit to a response filed with the district court as support for her request to deny Krentz's C.R.C.P. 60(b) motion. She compounded that deceit by again relying on the email in her appellate brief to advance her position. Her misconduct was both dishonest and selfish, so we apply this as a factor in aggravation. To avoid double-counting, however, we do not treat this factor as significant because dishonesty is already inherent in the nature of Respondent's misconduct.

Pattern of Misconduct – 9.22(c): Respondent engaged in a pattern of misconduct by standing behind the authenticity of a falsified email in her submissions to two separate tribunals—submissions themselves separated by almost eight months. The Hearing Board

[80] *See In re Ivy*, 374 P.3d 374, 382 (Alaska 2016) (noting that a lawyer's use or creation of false evidence can result in serious injury or serious potential injury to the legal system).
[81] ABA *Standard* 5.11(b).
[82] Though ABA *Standard* 6.2 typically establishes the presumptive sanction for a violation of Colo. RPC 3.4, we conclude that ABA *Standard* 6.1 is more apt here.
[83] *See* ABA *Standards* 9.21 & 9.31.

considers this ongoing pattern of dishonesty to be an aggravating factor of substantial weight (including consideration of the three-week delay described at the end of the next factor).

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): The People argue that Respondent has steadfastly refused to acknowledge the wrongful nature of her conduct and, in fact, has continued to deny any knowing wrongdoing. This is true: throughout the disciplinary proceeding, Respondent contended that Krentz's email address appeared in the header of the December 20, 2013, email by dint of her incompetence using computers—even in the face of three other alterations in the exhibits to her C.R.C.P. 60(b) response. But because we wish to allow Respondent latitude to present a defense, we do not find that this conduct warrants application of this aggravator. We do assign this aggravator some weight, however, based on Respondent's more than three-week delay in alerting the Court of Appeals or Simpson to the presence of the altered email after the People drew her attention to the alteration. We view this delay as a third component—albeit the most minor of the three—of the pattern of misconduct factor described in the prior paragraph.

Substantial Experience in the Practice of Law – 9.22(i): The People request application of this factor in aggravation. Respondent was admitted to the Colorado bar in 2005, so at the time of her misconduct she had been practicing law, primarily as a domestic relations and appellate attorney, for almost nine years. Yet Respondent really needed no experience to understand that intentionally presenting falsified emails to the district court and the Court of Appeals was inherently dishonest; as such, Respondent's legal experience did not necessarily make her misconduct less likely. We thus consider this a factor in aggravation but accord it relatively little significance in our analysis.

Mitigating Factors

Absence of Prior Disciplinary Record – 9.32(a): Respondent has not been subject to discipline since she was admitted to the bar nine years ago, which merits some mitigating credit.

Personal or Emotional Problems – 9.32(c): Though Respondent's counsel does not urge application of this mitigator, the personal circumstances attendant to Respondent's misconduct deserve mitigating import. At the time Respondent falsified the exhibit to her C.R.C.P. 60(b) response, she had spent the better part of the prior two years embroiled in a protracted and oftentimes difficult divorce, which began with Krentz's omission of his Bank of America account on a sworn financial affidavit. We also take into account that for much of that time she represented herself, rather than a client. Though these circumstances do not excuse Respondent's misconduct, they do help to explain it, at least in part: reasonable people in the throes of divorce proceedings often commit unreasonable acts that they would forswear in any other realm of their lives. To us, this mitigating factor is the most substantial one.

Character and Reputation – 9.32(g): Respondent presented testimony of Susan Fickess, a childhood friend, who attested that Respondent "speaks the truth" and "tells it the way it is." Fickess said that she "couldn't believe" Respondent would do anything that is dishonest. In fact, she praised Respondent's honesty and commended her for resisting natural impulses to tear down or belittle Krentz. Respondent also called Amy Buckridge, a former client of and contract paralegal for Respondent, to testify to Respondent's legal prowess. Buckridge opined that Respondent is "probably the best lawyer I've ever seen," and she lamented the toll that Judge Gerdes's order and the disciplinary proceeding have taken on Respondent's desire to practice. Buckridge opined that Respondent had "no intent" to engage in dishonest conduct, citing their shared work history as a basis for her belief. In addition, Respondent elicited testimony from Diana Krentz, one of Krentz's ex-wives, who expressed trust in Respondent and noted that she did not "see" dishonesty in Respondent's character. We do not accord significant weight to any of these witnesses' testimony, as none of them had knowledge of the conduct at issue here. However, we choose to extend some mitigating credit based on Buckridge's testimony, insofar as we are persuaded that Respondent's behavior in question was uncharacteristic and aberrational in the context of her law practice in general.

Analysis Under ABA *Standards* and Case Law

The Colorado Supreme Court has directed hearing board members to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors.[84] We are mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[85] Though prior cases are helpful by way of analogy, hearing boards must determine the appropriate sanction for a lawyer's misconduct on a case-by-case basis. The Colorado Supreme Court has suggested that cases predating the 1999 revision to this state's disciplinary system carry less precedential weight than more recent cases.[86]

Though the People cite ABA *Standards* calling for disbarment, they point to Colorado cases imposing suspensions of one year and one day as guiding authority for our analysis. We find these cases distinguishable based on our dissimilar finding as to mental state and the quantum of injury. For example, the People rely on *People v. Barnthouse*, in which a lawyer was suspended for one year and one day, as factually analogous to the circumstances here.[87] There, during his own divorce proceeding, Barnthouse harassed and threatened to file a grievance against a guardian *ad litem* for his sons, failed to follow court orders, and made false statements on his financial affidavits.[88] The Colorado Supreme Court approved use of an ABA *Standard* premised on a knowing—not intentional—state of mind and injury

[84] *See In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *In re Fischer*, 89 P.3d 817, 822 (Colo. 2004) (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).
[85] *Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[86] *Id.*
[87] 775 P.2d 545, 551 (Colo. 1989).
[88] *Id.* at 547-49.

or potential injury—not *serious* potential injury—which yielded a presumptive sanction of suspension.[89] The People also rely on *People v. Wotan*, where a lawyer was suspended for one year and one day, in part for filing with a tribunal a false certificate of review in a medical malpractice action.[90] As in *Barnthouse*, the Colorado Supreme Court applied an ABA *Standard* that involved knowing conduct causing injury or potential injury, leading to a finding that suspension was presumptive.[91]

As a counterpoint, we look to *People v. Goldstein*, where a lawyer committed the criminal offense of forging a United States Bankruptcy Court judge's signature, fabricated and forged two legal documents, and knowingly misrepresented material facts to his employer.[92] He was disbarred.[93] As here, Goldstein was found to have acted with intent; in contrast with the facts at hand, however, Goldstein committed multiple acts of different misconduct and was convicted of a federal criminal offense.[94] Likewise, in *People v. Marmon*, a lawyer was disbarred for forging three court documents to conceal his neglect of an adoption case.[95] As here, Marmon was adjudged to have acted with intent, so the Colorado Supreme Court applied an ABA *Standard* suggesting disbarment.[96] In contrast with the present case, however, Marmon was charged with two counts of second degree forgery.[97]

We also consider *In re Dornay*, a case from Washington that most closely parallels the facts in this matter.[98] Dornay was found to have intentionally given false testimony as a witness in her lover's dissolution proceeding, and the Washington Supreme Court approved application of ABA *Standards* that pointed to disbarment as the presumptive sanction.[99] The court held, however, that the weight of the three mitigating factors—including Dornay's status as victim of intimate partner violence—exceeded that of the three aggravating factors.[100] This evaluation led the court to affirm the hearing board's recommendation that Dornay be suspended for three years, rather than disbarred.[101]

With these authorities in mind, we consider the facts at hand. We have decided that Respondent acted with intent and caused serious potential injury, establishing disbarment

---

[89] *Id.* at 550.
[90] 944 P.2d 1257, 1261-62 (Colo. 1997).
[91] *Id.* at 1263.
[92] 887 P.2d 634, 634-35 (Colo. 1994).
[93] *Id.* at 644.
[94] *Id.* at 643, 636.
[95] 903 P.2d 651, 652 (Colo. 1995).
[96] *Id.* at 653-55.
[97] *Id.* at 653. The district court ultimately entered an order for deferred prosecution on one count, subject to conditions.
[98] 161 P.3d 333 (Wash. 2007).
[99] *Id.* at 338-39.
[100] *Id.* at 341.
[101] *Id.* at 342. In contrast, the Alaska Supreme Court disbarred a lawyer for testifying falsely in litigation in which she represented herself as a party. *In re Ivy*, 374 P.3d at 377. The court found that disbarment standards presumptively applied, identified six aggravating factors and only one mitigator, and concluded that the aggravators outweighed the lone mitigator. *Id*. at 383-84.

as the presumptive sanction. This meaningfully distinguishes *Barnthouse* and *Wotan* and removes those cases as useful benchmarks in our analysis. Yet we also conclude that Respondent's conduct was less egregious than that described in either *Goldstein* or *Marmon*: Respondent altered an exhibit to a court filing, rather than fabricating court orders from whole cloth or forging a judge's signature. And she has not, to our knowledge, been charged with or convicted of a crime founded on her misconduct. We thus do not view those cases as entirely comparable to the one before us.

Finally, we turn to *Attorney F*, which vests us with the responsibility to exercise our discretion in determining the appropriate sanction for Respondent's misconduct.[102] When we do, we conclude that, as in *Dornay*, Respondent should not be disbarred but rather should be suspended for three years. Respondent's behavior ran contrary to her duty of honesty to two courts, and it threatened the integrity of her divorce proceeding, which, like all disputes resolved through the adversary system, hinged on "fair competition" where the parties were to competitively marshal reliable evidence.[103] But Respondent's misconduct took place not while she was furthering the interests of a client, but rather at the end of a long and somewhat emotionally trying divorce in which she represented herself. Her misconduct also appears to represent a departure from her regular course of practice on behalf of her clients, as evidenced by her lack of discipline.[104] Bearing these considerations in mind, we conclude there is a reduced risk that she will again run afoul of the Rules of Professional Conduct. We thus deem a three-year suspension sufficient to answer her misconduct.

IV. CONCLUSION

Respondent purposefully altered an exhibit to a response that she filed with a trial court in the hopes of benefitting herself financially. She again relied on that falsified exhibit before an appellate tribunal. Such conduct is inimical to the rule of law and our system of justice, which depends on the accuracy and reliability of information that lawyers—officers of the court—submit during judicial proceedings. Respondent's dishonesty warrants a severe sanction, and we suspend her law license for three years.

---

[102] 285 P.3d at 325.

[103] Colo. RPC 3.4 cmt. 1; *see also* Colo. RPC 3.4 cmt. 2 ("Documents and other items of evidence are often essential to establish a claim or defense . . . . [T]he right of an opposing party . . . to obtain evidence . . . is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed.").

[104] *See In re Scanio*, 919 A.2d 1137, 1144 (D.C. 2007) (taking into account that a lawyer's misconduct did not occur in the course of representing a client); *In re Kennedy*, 542 A.2d 1225, 1230 (D.C. 1988) ("dishonest actions committed outside of the representation of a client . . . need not necessarily be sanctioned to the same degree as similar acts committed in the course of representation"); *Fla. Bar v. Baker*, 810 So. 2d 876, 881 (Fla. 2002) (in a case involving a lawyer's forgery of legally significant documents on his own behalf, stating that "[a]lthough lawyers may be disciplined for conduct that is not related to the practice of law, this Court has recognized that misconduct not connected with the practice of law is to be evaluated differently and may warrant less severe sanctions than misconduct committed in the course of the practice of law"); *In re Perez-Pena*, 168 P.3d 408, 415 (Wash. 2007) (distinguishing misconduct undertaken in the course of representing clients as serious, because the primary purpose of the Rules of Professional Conduct is protection of the public).

V. ORDER

The Hearing Board therefore **ORDERS:**

1. **DIANN ELAINE LINDQUIST**, attorney registration number **36382**, is **SUSPENDED FOR THREE YEARS.** The suspension will take effect upon issuance of an "Order and Notice of Suspension."[105]

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

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

4. The parties **MUST** file any posthearing motion or application for stay pending appeal with the Hearing Board **on or before Tuesday, November 29, 2016**. Any response thereto **MUST** be filed within seven days.

5. Respondent **SHALL** pay the costs of these proceedings. The People **SHALL** submit a statement of costs **on or before Tuesday, November 22, 2016**. Any response thereto **MUST** be filed within seven days.

[105] In general, an order and notice of sanction will issue thirty-five days after a decision is entered pursuant to C.R.C.P. 251.19(b) or (c). In some instances, the order and notice may issue later than thirty-five days by operation of C.R.C.P. 251.27(h), C.R.C.P. 59, or other applicable rules.

DATED THIS 8th DAY OF NOVEMBER, 2016.

Original Signature on File
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Original Signature on File
JOHN M. LEBSACK
HEARING BOARD MEMBER

Original Signature on File
DEAN S. NEUWIRTH
HEARING BOARD MEMBER

Copies to:

Erin R. Kristofco Office of Attorney Regulation Counsel	Via Email e.kristofco@csc.state.co.us
John S. Gleason Sara C. Van Deusen Counsel for Respondent	Via Email jgleason@bfwlaw.com svandeusen@bfwlaw.com
Hearing Board Members John M. Lebsack Dean S. Neuwirth	Via Email
Christopher T. Ryan Colorado Supreme Court	Via Hand Delivery