

People v. Barr, 05PDJ038. January 10, 2006. Attorney Regulation.

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Respondent Stuart George Barr (Attorney Registration No. 04032) from the practice of law, effective February 10, 2006. The Presiding Disciplinary Judge also ordered Respondent to pay restitution and the costs incurred in conjunction with these proceedings. The facts admitted through the entry of default showed Respondent breached his duties to act with reasonable diligence and promptness in representing a client when he knowingly failed to file a complaint on behalf of his client in a personal injury action prior to the expiration of the statute of limitations. Respondent's conduct caused serious harm to his client. Respondent also knowingly failed to respond or cooperate with the People in the investigation of this matter. The admitted facts proved violations of Colo. RPC 1.3 and 8.1(b) and warrant discipline under C.R.C.P. 251.5(d). Respondent failed to participate or present any mitigating evidence in these proceedings. Accordingly, the Presiding Disciplinary Judge found no adequate basis to depart from the presumptive sanction of disbarment.

<p style="text-align: center;">SUPREME COURT, STATE OF COLORADO</p> <p style="text-align: center;">ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202</p>	
<p>Complainant: THE PEOPLE OF THE STATE OF COLORADO,</p> <p>Respondent: STUART GEORGE BARR.</p>	<p>Case Number: 05PDJ038</p>
<p style="text-align: center;">REPORT, DECISION, AND ORDER IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.15(b)</p>	

On November 8, 2005, William R. Lucero, the Presiding Disciplinary Judge (“the Court”), held a Sanctions Hearing pursuant to C.R.C.P. 251.18(d). April M. Seekamp appeared on behalf of the Office of Attorney Regulation Counsel (“the People”). Stuart George Barr (“Respondent”) did not appear, nor did counsel appear on his behalf. The Court issues the following Report, Decision, and Order Imposing Sanctions.

I. ISSUE

Disbarment is the appropriate sanction when a lawyer knowingly fails to perform services and causes serious or potentially serious injury to a client. Respondent knowingly failed to file a complaint on behalf of a client and failed to cooperate with the People in these proceedings. Respondent also failed to participate or present any evidence to mitigate his conduct and has been disciplined seven times in the past for failing to perform client services. Is disbarment the appropriate sanction under these circumstances?

SANCTION IMPOSED: ATTORNEY DISBARRED

II. PROCEDURAL HISTORY AND BACKGROUND

Respondent failed to file an answer in these proceedings and the Court granted the People’s Motion for Default on July 18, 2005. Upon the entry of default, the Court deems all facts in the complaint admitted and all rule violations established. *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

The Court hereby adopts and incorporates by reference the factual background of this case fully detailed in the admitted complaint.¹ In summary, Respondent failed to act professionally when he knowingly failed to file a complaint on behalf of his client in a personal injury action prior to the expiration of the statute of limitations. Consequently, the client is forever barred from bringing a personal injury action against the driver of the vehicle who caused the accident. Respondent also knowingly failed to respond or cooperate with the People in the investigation of this matter. The facts admitted through the entry of default constitute violations of Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client and shall not neglect a legal matter entrusted to that lawyer) and Colo. RPC 8.1(b) (a lawyer shall not fail to respond reasonably to a lawful demand for information from a disciplinary authority) and warrant discipline under C.R.C.P. 251.5(d).

III. SANCTIONS

The ABA Standards for Imposing Lawyer Sanctions (1991 & Supp. 1992) (“ABA *Standards*”) and Colorado Supreme Court case law are the guiding authorities for selecting and imposing sanctions for lawyer misconduct. Disbarment generally is appropriate when a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client. ABA *Standard* 4.41. Disbarment is therefore the presumptive sanction in this case. The Court, however, must also examine the duty breached, the mental state of the lawyer, the injury or potential injury caused, and the aggravating and mitigating evidence pursuant to ABA *Standard* 3.0.

Respondent’s failure to participate in these proceedings leaves the Court with no other option but to consider only the allegations and rule violations set forth in the Complaint in evaluating the factors listed above. The Court finds Respondent breached his duties to act with reasonable diligence and promptness when he failed to file a complaint on behalf of his client, and failed to cooperate with the People in the investigation of this matter. The entry of default established that Respondent knowingly neglected his client’s case and knowingly failed to reasonably respond to a lawful demand for information by the People. The facts established by the entry of default also support a finding of serious harm to Respondent’s client, W. Michael Stoetzel.

The People alleged several aggravating factors including prior disciplinary offenses, a pattern of misconduct, bad faith obstruction of the disciplinary proceedings, refusal to acknowledge the wrongful nature of his conduct, substantial experience in the practice of law, and indifference to making restitution. Of greatest concern, Respondent’s prior disciplinary offenses

¹ The Complaint is attached to this Report as Exhibit A.

involved seven other matters where he neglected clients or failed to complete his representation in their cases. Most recently, the PDJ suspended Respondent for nine months in June 2004 after he neglected a client matter and caused serious injury. At the Sanctions Hearing, Mr. Stoetzel, the complainant in this case, made a statement to the Court with regard to Respondent's neglect and dishonest conduct in dealing with his case and the serious injury he suffered as a result of Respondent's conduct. Mr. Stoetzel also informed the Court of his repeated efforts to contact Respondent and detailed the malpractice claim he eventually filed against Respondent. Due in part to the absence of any contradictory evidence, the Court finds clear and convincing evidence to support each aggravating factor alleged by the People.

Colorado Supreme Court case law applying the ABA *Standards* holds disbarment is the appropriate sanction in cases involving a lawyer who knowingly fails to perform services and engages in a pattern of neglect. In *People v. Murray*, 887 P.2d 1016 (Colo. 1994), the Supreme Court determined that knowing failure to perform services for clients in ten separate matters constituted a pattern of neglect. As a result, and because the attorney caused potentially serious harm to the clients, the attorney was disbarred. *See also People v. Williams*, 845 P.2d 1150 (Colo. 1993) (disbarment warranted when lawyer neglects legal matter, fails to return client's retainer, evades service of process, fails to respond to request for investigation, and abandons practice).

IV. CONCLUSION

One of the primary goals of our disciplinary system is to protect the public from lawyers who pose a danger to them. The facts established in the complaint reveal a significant injury to Respondent's former client that arose from Respondent's neglect of his client's personal injury matter. This conduct combined with Respondent's lengthy disciplinary history of similar conduct warrants a serious sanction. Upon consideration of the nature of Respondent's misconduct, his mental state, the significant harm he caused to his client, the absence of mitigating factors, and the numerous aggravating factors presented in this case, the Court concludes there is no justification for a sanction short of disbarment.

V. ORDER

The Court therefore **ORDERS**:

1. STUART GEORGE BARR, Attorney Registration No. 04032, is **DISBARRED** from the practice of law, effective thirty-one (31) days from the date of this Order, and his name shall be stricken from the list of attorneys licensed to practice law in the State of Colorado.

2. STUART GEORGE BARR **SHALL** pay restitution to his former client W. Michael Stoetzel in the amount of the outstanding malpractice judgment (\$67,761.43) as a condition of readmission.
3. STUART GEORGE BARR **SHALL** pay the costs of these proceedings. The People shall submit a Statement of Costs within fifteen (15) days of the date of this Order. Respondent shall have ten (10) days within which to respond.

DATED THIS 10TH DAY OF JANUARY, 2006.

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Copies to:

April M. Seekamp
Office of Attorney Regulation Counsel

Stuart George Barr
Respondent
3515 S. Tamarac Dr., #200
Denver, CO 80237

2601 S. Jackson Street
Denver, CO 80210-5640

Susan Festag
Colorado Supreme Court

Via Hand Delivery

EXHIBIT A

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE	
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<p>BEFORE THE PRESIDING DISCIPLINARY JUDGE 600 17th Street, Suite 510-South Denver, Colorado 80202</p> <hr/> <p>Complainant: THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondent: STUART GEORGE BARR</p> <hr/> <p>April M. Seekamp, #34194 Assistant Regulation Counsel John S. Gleason, #15011 Regulation Counsel Attorneys for Complainant 600 17th Street, Suite 200-South Denver, Colorado 80202</p> <p>Telephone: (303) 866-6400, ext. 6432 Fax No.: (303) 893-5302</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number:</p>
<p>COMPLAINT</p>	

THIS COMPLAINT is filed pursuant to the authority of C.R.C.P. 251.9 through 251.14, and it is alleged as follows:

Jurisdiction

1. The respondent has taken and subscribed the oath of admission, was admitted to the bar of this court on April 26, 1972, and is registered upon the official records of this court, registration no. 4032. He is subject to the jurisdiction of this court in these disciplinary proceedings. The respondent's registered business address is 3515 S. Tamarac Dr., #200, Denver, Colorado 80237. The respondent's registered home address is 1125 Columbine Street, Apt. 208, Denver, Colorado 80206.

CLAIM I
[Neglect of a Legal Matter - Colo. RPC 1.3]

2. On or about March 31, 1999, Michael Stoetzel sustained injuries in an automobile accident.

3. Mr. Stoetzel retained the respondent to represent him in asserting claims against the party responsible for causing the accident. Accordingly, an

attorney-client relationship was formed between the respondent and Mr. Stoetzel.

4. The statute of limitations for claims arising out of an automobile accident was, at all relevant times, three years from the date of the accident. Mr. Stoetzel retained the respondent well within the applicable limitation period and the respondent had ample opportunity to file a complaint on Mr. Stoetzel's behalf.

5. As of March 2002, the respondent had not filed a complaint on Mr. Stoetzel's behalf and Mr. Stoetzel became concerned about the statute of limitations. Mr. Stoetzel had actually received notice from the insurer for the party responsible for the accident that the statute of limitations was about to expire.

6. After experiencing difficulty reaching the respondent at his office throughout most of March 2002, Mr. Stoetzel was able to speak to the respondent on March 29, 2002.

7. On March 29, 2002, the respondent assured Mr. Stoetzel that the respondent would file a complaint promptly to avoid any statute of limitations problem in Mr. Stoetzel's case.

8. The statute of limitations with respect to Mr. Stoetzel's claim expired on March 31, 2002. The respondent failed to file a complaint on Mr. Stoetzel's behalf prior to the expiration of the statute of limitations, or at any time thereafter.

9. Mr. Stoetzel is now forever barred from bringing a personal injury action against the driver of the vehicle who caused the accident and the injuries Mr. Stoetzel allegedly suffered as a result.

10. Shortly after learning that the respondent failed to file a complaint within the applicable statute of limitations, Mr. Stoetzel retained an attorney to represent him in a legal malpractice claim against the respondent.

11. In early 2003, Mr. Stoetzel, through counsel, filed suit against the respondent in Denver District Court, Case No. 03CV626.

12. The respondent filed an answer to the complaint filed by Mr. Stoetzel in which he admitted many of the factual allegations. Thereafter, the respondent failed to respond to discovery propounded to him in the malpractice case.

13. On January 14, 2004, Mr. Stoetzel's counsel filed a motion for

partial summary judgment against the respondent in the malpractice case. The court granted the motion and scheduled a hearing for April 27, 2004, to establish the amount of Mr. Stoetzel's damages.

14. On May 28, 2004, the court issued findings of fact, conclusions of law and judgment in favor of Mr. Stoetzel and against the respondent in the malpractice case. Shortly thereafter, Mr. Stoetzel's counsel filed a motion seeking an award of attorney fees in addition to the judgment previously entered in favor of Mr. Stoetzel.

15. On June 9, 2004, the court entered amended findings of fact, conclusions of law and judgment in favor of Mr. Stoetzel and against the respondent. The total judgment entered against the respondent was for \$67,761.43, including attorney fees, costs and pre-judgment interest.

16. Pursuant to Colo. RPC 1.3, a lawyer shall not neglect a legal matter entrusted to the lawyer.

17. Through his conduct as described above, the respondent neglected a legal matter entrusted to him by Mr. Stoetzel, in violation of Colo. RPC 1.3.

18. As a result of his neglect of Mr. Stoetzel's case, the respondent caused Mr. Stoetzel to lose the right to assert a meritorious claim for damages arising from his automobile accident and caused Mr. Stoetzel to incur additional attorney fees and costs in pursuing his malpractice claim against the respondent.

19. The total monetary damages suffered by Mr. Stoetzel as a result of the respondent's neglect was over \$67,000.00, as determined by the Denver District Court.

20. The respondent has not satisfied any portion of the judgment and has obtained an order of discharge with respect to this judgment debt and all other dischargeable debts through a bankruptcy filing in the United States Bankruptcy Court.

WHEREFORE, the complainant prays at the conclusion hereof.

CLAIM II

[Failure to Respond Reasonably to a Lawful Demand for Information from a Disciplinary Authority – Colo. RPC 8.1(b) and C.R.C.P. 251.5(d)]

21. Paragraphs 1 through 20 are incorporated herein as if fully set forth.

22. On December 14, 2004, the Office of Attorney Regulation Counsel sent notice of the request for investigation in Mr. Stoetzel's matter to the respondent, via certified and regular mail, at his registered business address. At that address, Craig Eley, Esq., signed for the certified letter. Mr. Eley leased office space to the respondent at his registered business address.

23. On January 5, 2005, the Office of Attorney Regulation Counsel sent notice of the request for investigation to the respondent via certified and regular mail at his registered home address at 1125 Columbine Street, Apt. 208, Denver, Colorado 80206. This is also the address the respondent provided in his affidavit of compliance with C.R.C.P. 251.28(d), following his suspension from the practice of law in a separate matter in July of 2004.

24. The respondent personally signed for the certified correspondence sent to his registered home address on January 7, 2005.

25. The notice and letter from Regulation Counsel advised the respondent that he was required to respond to the request for investigation within 20 days of receipt of the letter.

26. As of February 10, 2005, the respondent had not submitted a response to the request for investigation or contacted Regulation Counsel concerning the matter.

27. On February 10, 2005, the Office of Attorney Regulation Counsel sent another letter to the respondent at his registered home address advising him that he had failed to submit a response to the request for investigation. In the letter, the respondent was notified that his failure to respond could be, in and of itself, grounds for discipline and could affect his ability to obtain reinstatement from his current suspension from the practice of law.

28. The respondent failed to submit any response to the request for investigation, despite knowing that he had an obligation to respond and to cooperate with the Office of Attorney Regulation Counsel in its investigation.

29. Pursuant to Colo. RPC 8.1(b), a lawyer in connection with a disciplinary matter shall not knowingly fail to respond reasonably to a lawful demand for information from a disciplinary authority, except that the rule does not require disclosure of information otherwise protected by Rule 1.6 of the Colorado Rules of Professional Conduct or prohibit a good faith challenge to the demand for such information.

30. Through his conduct as described above, the respondent knowingly failed to respond reasonably to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter.

31. The respondent was not asked to disclose information otherwise protected by Colo. RPC 1.6, nor did he assert Colo. RPC 1.6 as a basis for failing to respond to the request for investigation.

32. The respondent has not made a good faith challenge to the demand for information from the Office of Attorney Regulation Counsel.

33. Through his conduct as described above, the respondent violated Colo. RPC 8.1(b).

34. Pursuant to C.R.C.P. 251.5(d), a lawyer's failure to respond without good cause shown to a request by the Office of Attorney Regulation Counsel in the performance of its duties constitutes grounds for discipline.

35. Through his conduct as described above, the respondent failed to respond without good cause to a request by the Office of Attorney Regulation Counsel in the performance of its duties.

36. The respondent's failure constitutes grounds for discipline pursuant to C.R.C.P. 251.5(d).

WHEREFORE, the people pray that the respondent be found to have engaged in misconduct under C.R.C.P. 251.5 and the Colorado Rules of Professional Conduct as specified above; the respondent be appropriately disciplined for such misconduct; the respondent be required to take any other remedial action appropriate under the circumstances; and the respondent be assessed the costs of this proceeding.

DATED this _____ day of April, 2005.

Respectfully submitted,

April M. Seekamp, #34194
Assistant Regulation Counsel
John S. Gleason, #15011
Regulation Counsel

Attorneys for Complainant