

People v. Michael R. Lawrence. 09PDJ040. November 22, 2010. Attorney Regulation.

Following a Sanctions Hearing, a Hearing Board disbarred Michael R. Lawrence (Attorney Registration No. 24958) from the practice of law, effective December 23, 2010. Respondent was convicted of three felonies: attempting to influence a public servant, forgery, and offering a false instrument for recording in the first degree. His misconduct constituted grounds for the imposition of discipline pursuant to C.R.C.P. 251.5, and violated Colo. RPC 8.4(b) and 8.4(c).

<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: MICHAEL R. LAWRENCE</p>	<p>Case Number: 09PDJ040</p>	
<p style="text-align: center;">DECISION AND ORDER IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.19(b)</p>		

On November 4, 2010, a Hearing Board composed of Helen R. Stone, a member of the Bar, David S. Wahl, a citizen Hearing Board member, and William R. Lucero, the Presiding Disciplinary Judge (“PDJ”), held a Sanctions Hearing pursuant to C.R.C.P. 251.15(b). April M. McMurrey appeared on behalf of the Office of Attorney Regulation Counsel (“the People”). Michael R. Lawrence (“Respondent”) did not appear, nor did counsel appear on his behalf. The Hearing Board now issues the following “Decision and Order Imposing Sanctions Pursuant to C.R.C.P. 251.19(b).”

I. ISSUE AND SANCTION

Disbarment is typically appropriate when a lawyer commits fraud. Respondent was convicted of three felonies: attempting to influence a public servant, forgery, and offering a false instrument for recording in the first degree. The Hearing Board must determine whether disbarment is warranted in Respondent’s case.

Respondent did not attend the sanctions hearing, and the Hearing Board is aware of just one factor that mitigates Respondent’s conduct. After considering the nature of Respondent’s misconduct and its consequences, the aggravating factors, and the scarcity of countervailing mitigating factors, the Hearing Board finds the appropriate sanction for Respondent’s misconduct is disbarment.

II. PROCEDURAL HISTORY¹

On May 19, 2009, the People filed a complaint alleging Respondent violated Colo. RPC 8.4(b) and (c), based upon criminal charges that had been filed against Respondent. Respondent filed his answer in the disciplinary proceedings on June 16, 2009.² After an at-issue conference held on June 29, 2009, the PDJ issued an order deferring the disciplinary proceedings until the conclusion of the criminal prosecution of Respondent.

After a jury returned a guilty verdict for Respondent in his criminal matter, the PDJ held an at-issue conference on June 9, 2010. Ms. McMurrey appeared on behalf of the People, but Respondent failed to appear. As a result, on June 23, 2010, the PDJ issued an order to show cause why the PDJ should not proceed with scheduling the matter for a hearing. Both parties then appeared at an at-issue conference held on July 21, 2010.

On July 30, 2010, the People filed a petition for immediate suspension. The PDJ then issued an order directing Respondent to show cause why he should not be immediately suspended from the practice of law. Following a hearing on August 23, 2010, the PDJ recommended Respondent's immediate suspension, and on September 1, 2010, the Colorado Supreme Court issued an order immediately suspending Respondent from the practice of law in the State of Colorado.

The People filed a motion for summary judgment in this matter on September 3, 2010; Respondent did not file a response. On September 29, 2010, the PDJ granted the People's motion for summary judgment on both claims alleged in the complaint.

III. ESTABLISHED FACTS AND RULE VIOLATIONS

Respondent took and subscribed the Oath of Admission and gained admission to the Bar of the Colorado Supreme Court on November 4, 1994. He is registered upon the official records, Attorney Registration No. 24958, and is therefore subject to the jurisdiction of the Hearing Board pursuant to C.R.C.P. 251.1.

On February 27, 2009, a criminal complaint was filed against Respondent in *People v. Michael Richard Lawrence*, Denver City & County

¹ The procedural history in this matter is particularly extensive, and includes several dozen pleadings, filings, and orders. Accordingly, a condensed summary of the procedural history in this matter is provided here.

² Respondent filed an amended answer on July 17, 2009. He filed a second amended answer on August 31, 2010, following the People's filing of an amended complaint on August 3, 2010.

Court case number 09CR1135. Respondent was charged with the following counts:

- Count 1: Attempting to Influence a Public Servant in violation of C.R.S. § 18-8-306 (F4);
- Count 2: Forgery in violation of C.R.S. § 18-5-102(1)(c) (F5); and
- Count 3: Offering a False Instrument for Recording in the First Degree in violation of C.R.S. § 18-5-114(1) (F5).

The charges in the criminal matter arose out of a civil lawsuit Respondent filed against the law firm of Roberto Portales (“Portales”). Respondent claimed that Portales’s firm owed Respondent money for work he performed while employed by the firm. In the course of the lawsuit, Respondent filed with the court a purported contract between him and the firm that contained Portales’s forged signature.

A jury found Respondent guilty on all three counts following a trial on June 2, 2010. On July 23, 2010, Denver District Court Judge Christina M. Habas sentenced Respondent on each count to three years of probation, fees and costs, and thirty days in jail, to run concurrent to the other counts. Respondent filed a notice of appeal on July 19, 2010.³

As noted above, the PDJ granted summary judgment on the claims alleged in the People’s disciplinary complaint on September 29, 2010. That order was premised upon C.R.C.P. 251.20(a), which provides that a certified copy of a judgment of criminal conviction shall conclusively establish the existence of such conviction for purposes of disciplinary proceedings. As the PDJ held in his order granting summary judgment, the sentencing order in Respondent’s criminal case conclusively establishes that Respondent was found guilty of attempting to influence a public servant, forgery, and offering a false instrument for recording in the first degree. Under Colorado case law, serious criminal misconduct, including forgery, violates Colo. RPC 8.4(b) and (c). Accordingly, the PDJ determined in his summary judgment order that Respondent violated Colo. RPC 8.4(b) and (c).

IV. SANCTIONS

The ABA Standards for Imposing Lawyer Sanctions (“ABA *Standards*”) and Colorado Supreme Court case law are the guiding authorities for selecting and imposing sanctions for lawyer misconduct.⁴ In determining the

³ Because Respondent did not participate in the sanctions hearing, the Hearing Board is unaware of the status of Respondent’s appeal.

⁴ See *In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).

appropriate sanction after a finding of lawyer misconduct, the Hearing Board must consider the duty violated; the lawyer's mental state; the actual or potential injury caused by the lawyer's misconduct; and the existence of aggravating and mitigating evidence pursuant to ABA *Standard* 3.0.

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

Duty: By engaging in criminal conduct, Respondent violated his duty to the public to uphold the laws of the State of Colorado. In addition, by submitting a forged document to the court, Respondent failed to uphold his duty of honesty and candor to the tribunal.

Mental State: Each crime of which Respondent was convicted contains the element of an intent to defraud or an intent to alter or affect a public servant's decision. Accordingly, Respondent's criminal convictions establish that he acted with an intentional state of mind in the conduct underlying these disciplinary proceedings.

Injury: Respondent's dishonesty towards the tribunal caused serious harm to the legal system and to the reputation of the legal profession.⁵ Respondent caused another potential injury to the legal system of a serious nature: had the city and county court accepted Respondent's forged document, the court would have entered a ruling based on false information. Finally, Respondent harmed Portales by forcing him to defend a lawsuit based on forged evidence. Portales testified at the sanctions hearing that the legal proceedings cost his firm a significant amount of money and that he has not received court-ordered payments from Respondent. Portales further testified that the legal proceedings caused him significant stress.

ABA *Standard* 3.0 – Aggravating & Mitigating Factors

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of discipline to be imposed.⁶ Mitigating circumstances include any considerations or factors that may justify a reduction in the degree of discipline to be imposed.⁷ In this case, Respondent has not participated in the disciplinary proceedings, and the Hearing Board is aware of just one mitigating circumstance. The Hearing Board considered evidence of the following aggravating and mitigating circumstances in deciding the appropriate sanction.

⁵ See *In re Pautler*, 47 P.3d 1175, 1179 (Colo. 2002) ("Lawyers serve our system of justice, and if lawyers are dishonest, then there is a perception that the system, too, must be dishonest.").

⁶ See ABA *Standard* 9.21.

⁷ See ABA *Standard* 9.31.

Prior Disciplinary Offenses – 9.22(a): Respondent was suspended from the practice of law for one year and one day, all stayed upon successful completion of a two-year period of probation, in 2005. That matter was based upon Respondent's failure to communicate with clients, neglect of clients' matters, failure to comply with court orders, and conduct prejudicial to the administration of justice.

Dishonest or Selfish Motive – 9.22(b): By committing forgery, Respondent engaged in dishonest behavior. In addition, Respondent engaged in forgery for the selfish motive of prevailing in a legal proceeding.

Substantial Experience in the Practice of Law – 9.22(i): Respondent was admitted to the Colorado bar in 1994. Therefore, he has extensive experience in the practice of law.

Illegal Conduct – 9.22(k): Respondent's three felony convictions establish that he engaged in illegal conduct.

Imposition of Other Penalties or Sanctions – 9.32(k): Respondent was sentenced to thirty days in jail in his criminal matter and remains on probation. The Hearing Board considers this factor in mitigation.

Analysis Under ABA Standards and Colorado Case Law

ABA *Standard* 5.11 provides that disbarment is generally appropriate when: (a) a lawyer engages in serious criminal conduct a necessary element of which includes misrepresentation or fraud, among other possible elements; or (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

The Colorado Supreme Court has held that disbarment is generally the appropriate sanction for lawyers who engage in forgery or related forms of fraud.⁸ For example, in *People v. Marmon*, the Colorado Supreme Court

⁸ See *In re Lopez*, 980 P.2d 983, 984 (Colo. 1999) (ordering disbarment of lawyer who had been convicted of fraud or deceit in the sale of securities, perjury, and forgery, where just one mitigating factor was present); *People v. Hilgendorf*, 895 P.2d 544, 544-45 (Colo. 1995) (ordering disbarment of lawyer without prior discipline who had been convicted of two counts of making false statements to federal banks); *People v. Robertson*, 908 P.2d 96, 99-100 (Colo. 1995) (ordering disbarment of lawyer who, among other serious misconduct, forged his wife's name on deeds and forged his clients' signatures on a check); *People v. Goldstein*, 887 P.2d 634, 634-35 (Colo. 1994) (ordering disbarment of lawyer who had forged a judge's signature, forged two legal documents, and knowingly misrepresented material facts to his employer); *People v. Brown*, 726 P.2d 638, 639-40 (Colo. 1986) (ordering disbarment of district attorney who had been convicted of forgery, abuse of public records, and computer crime, notwithstanding the argument that his misconduct was an isolated event).

ordered the disbarment of a lawyer (and part-time county judge) who forged three court documents to hide his neglect of an adoption case.⁹ In the underlying criminal proceedings against the lawyer, prosecution of a second-degree forgery charge had been deferred by the district court, while another second-degree forgery count had been dismissed.¹⁰ Although the hearing board found two factors mitigating the lawyer's conduct, the board also found five factors in aggravation.¹¹

In limited instances, the Colorado Supreme Court has imposed a lengthy suspension, rather than disbarment, for attorney misconduct involving forgery, fraud, or misrepresentation. However, those cases have involved significant mitigating factors or extenuating circumstances.¹² For example, in *People v. Preblud*, the Colorado Supreme Court ordered a three-year suspension for a lawyer who had been convicted of securities fraud where *eleven* mitigating factors were present and the lawyer had only indirect involvement in the fraudulent scheme.¹³

In this instance, the Hearing Board determines that the ABA *Standards* and Colorado case law mandate the imposition of disbarment. The crimes of which Respondent was convicted include the element of an intentional attempt to defraud, and such conduct adversely reflects on Respondent's fitness to practice. Accordingly, Respondent's misconduct falls squarely within the bounds of ABA *Standard* 5.11. While Colorado case law holds that suspension may be appropriate under narrow circumstances for a lawyer who has engaged in fraudulent conduct, those circumstances are not present here. The Hearing Board is aware of just one factor mitigating Respondent's conduct, and the Hearing Board is unaware of any other extenuating circumstances that would make a sanction less than disbarment appropriate. Accordingly, the Hearing Board finds that Respondent should be disbarred.

V. CONCLUSION

The duty to be truthful is one of a lawyer's paramount duties as a member of the bar. Respondent's decision to file a forged document with a court, intending to obtain a favorable result for himself in his lawsuit,

⁹ 903 P.2d 651, 652, 656 (Colo. 1995).

¹⁰ *Id.* at 653.

¹¹ *Id.* at 655.

¹² See *People v. Lutz*, 897 P.2d 807, 808-09 (Colo. 1995) (ordering suspension for a year and a day for lawyer who had misrepresented a material fact to a court and filed forged waiver of service forms, but noting this sanction would be too lenient had the lawyer not testified that he planned to retire that year); *People v. Proffitt*, 731 P.2d 1257, 1259-60 (Colo. 1987) (ordering suspension for a year and a day for lawyer who had pled guilty to the felony crime of fraud by check, where five mitigating factors were established but no aggravating factors were found to be present).

¹³ 764 P.2d 822, 826 (Colo. 1988).

represents a dereliction of that duty. Such conduct not only demonstrates lack of fitness to practice law, it also engenders public mistrust of the legal profession as a whole. In light of Respondent's misconduct, the significant aggravating factors, the limited mitigating factors, and the need to protect the public, the Hearing Board concludes Respondent should be disbarred.

VI. ORDER

The Hearing Board therefore **ORDERS**:

1. Michael R. Lawrence, Attorney Registration No. 24958, is hereby **DISBARRED**. The disbarment **SHALL** become effective thirty-one days from the date of this order upon the issuance of an "Order and Notice of Disbarment" by the PDJ and in the absence of a stay pending appeal pursuant to C.R.C.P. 251.27(h).
2. Respondent **SHALL** file any post-hearing motion or application for stay pending appeal with the PDJ **on or before Monday, December 13, 2010**. No extension of time will be granted.
3. Respondent **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.