***People v. Juliet Rene Piccone*. 19PDJ041. January 13, 2020.**

A hearing board suspended Juliet Rene Piccone (attorney registration number 30934) for six months, all stayed upon the successful completion of a two-year probationary period, with conditions. The probation took effect February 18, 2020.

In two separate client cases, Piccone signed engagement agreements containing a provision permitting her to reverse previously granted courtesy discounts if her representation was terminated before the case's completion. In the same cases, Respondent made eight posts on social media that revealed client information; some of those posts also disclosed confidential attorney-client communications and disparaged her clients. And in connection with one of those cases, Respondent posted on social media embarrassing information that had no substantial purpose other than to humiliate opposing counsel.

Piccone's conduct violated Colo. RPC 1.5(g) (a lawyer shall not purport to restrict a client's right to terminate the representation); Colo. RPC 1.6(a) (a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent); and Colo. RPC 4.4(a) (in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person)

The case file is public per C.R.C.P. 251.31. 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:** JULIET RENE PICCONE, #30934	Case Number: **19PDJ041**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)	

In two separate client cases, Juliet Rene Piccone ("Respondent") signed engagement agreements containing a provision permitting her to reverse previously granted courtesy discounts if her representation was terminated before the case's completion. This provision offended Colo. RPC 1.5(g), which prohibits agreements that purport to restrict clients' rights to terminate representation. In the same cases, Respondent made eight posts on social media that revealed client information; some of those posts also disclosed confidential attorney-client communications and disparaged her clients. She thereby violated Colo. RPC 1.6(a). And in connection with one of those cases, Respondent posted on social media embarrassing information that had no substantial purpose other to humiliate opposing counsel, which contravened Colo. RPC 4.4(a). Respondent's misconduct warrants a suspension of six months, all stayed upon the successful completion of conditions during a two-year probationary period.

I. PROCEDURAL HISTORY

On June 4, 2019, Erin R. Kristofco, Office of Attorney Regulation Counsel ("the People"), filed a complaint with Presiding Disciplinary Judge William R. Lucero ("the PDJ"), alleging that Respondent violated Colo. RPC 1.5(g) (Claim I), Colo. RPC 1.6(a) (Claim II), Colo. RPC 3.6(a) (Claim III), and Colo. RPC 4.4(a) (Claim IV). Respondent filed an answer through her counsel, Gerald D. Pratt, on July 2, 2019. The PDJ then set a four-day trial.

A hearing in this matter was held from November 12 through 15, 2019, heard by a Hearing Board comprising the PDJ and lawyers Dean S. Neuwirth and Boston H. Stanton Jr. Kristofco represented the People, and Respondent appeared with her counsel. A

sequestration order was entered. The Hearing Board considered stipulated exhibits S1-S41,[1] the People's exhibits 1-6, and Respondent's exhibits A, B, and F. The Hearing Board also heard the testimony of O.J.,[2] Jay Swearingen, Anthony Youngblood, Jenee Shipman, "City Attorney," and Respondent.

On November 20, 2019, the parties filed a "Stipulation Re Certain Matters Addressed at the Hearing," in which they agreed that exhibit S5 should be suppressed, City Attorney's name should be redacted in the hearing transcript, and Respondent's clients should be referred to by their initials in this opinion.[3]

II. FACTUAL FINDINGS AND LEGAL ANALYSIS

Respondent was admitted to practice law in Colorado on October 25, 1999, under attorney registration number 30934. She is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[4]

Findings of Fact

These findings, which we conclude have been established by clear and convincing evidence, are drawn from testimony at the disciplinary hearing where not otherwise indicated. All of the events described in the Bandit and Diamond cases took place in 2017.

Respondent was born and raised in Wheat Ridge, Colorado. She graduated from the University of Colorado Boulder with a major in political science, and then attended the University of Colorado Law School, earning her law degree in 1999. She was admitted to practice law in Colorado that same year. As a newly minted lawyer, Respondent clerked for a judge in Colorado's Eighth Judicial District and then worked for a series of insurance defense firms. During that period she read an article about animal law, which intrigued her. As she recounted, "I've always loved animals. When I was a kid, my pets were my friends . . . I was kind of lonely, but they were always there." She set a goal of becoming an animal law practitioner.

By 2012, Respondent had saved enough money to pursue her ambition. She quit her job and volunteered as a part-time intern at The Animal Law Center ("TALC") for ten months. But the organization was not in a financial position to offer her employment, so she struck out on her own in 2013 as eponymous founder of The Piccone Law Firm, LLC, where she began a practice in varied areas of animal law. As the owner of and sole lawyer in the firm, Respondent handles all facets of her law practice, including billing and administrative work. In addition, she manages her law firm's social media, including its Facebook page.

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[1] Exhibit S5 is **SUPPRESSED**. **On or before January 21, 2020**, the People **SHALL** refile the stipulated exhibits as one PDF, designating Exhibit S5 as suppressed.

[2] O.J. testified with the assistance of a Russian translator.

[3] The PDJ **SUPPRESSES** the parties' November 20 stipulation.

[4] *See* C.R.C.P. 251.1(b).

Respondent is also a self-described animal rights activist. In 2014, she established two 501(c)(4) social welfare nonprofit corporations: the first, Saving Colorado Shelter Pets, Inc., was a vehicle to advance a ballot proposal mandating that all Colorado animal shelters be designated "no-kill"; the second, Colorado for Breed-Neutral Dog Laws, lobbied to repeal the City of Aurora's pit bull restriction. In her capacity as an activist, Respondent administered a Facebook page called SAVE pets from Aurora Colorado Animal Care and Control ("SAVE").[5]

Bandit's Case

S.T. and O.J., an Aurora couple, owned a pit bull named Bandit. On January 4, 2017, Bandit ran out the front door of the family's house and bit a FedEx delivery man in the face.[6] The City of Aurora ("the City") impounded Bandit and charged S.T. with four city ordinance violations: (1) dog running at large; (2) keeping an aggressive or dangerous animal; (3) failure to obtain a rabies inoculation; and (4) unlawful keeping of a restricted breed (pit bull).[7] The City lodged these charges with the Aurora Municipal Court under case number K64573.[8]

An expedited disposition hearing was set for January 13, during which the Aurora Municipal Court was to decide whether Bandit could be released back into the community safely under S.T.'s ownership and control.[9] At the hearing, S.T. represented himself,[10] and Kyle McDaniel, a lawyer from the City Attorney's Office, represented the City. The judge announced the four charges and then asked S.T., whose native language is Russian, whether he felt more comfortable proceeding with a Russian interpreter.[11] S.T. declined the offer. The prosecution moved to dismiss the rabies charge after S.T. presented proof of Bandit's inoculation, and the parties agreed to move forward with the proceeding that day.[12]

At the hearing, two witnesses testified: S.T.'s son, and Aurora Animal Care and Control ("AACC") officer Carlie Perry, who described the details of the dog bite incident, her investigation, and her observations about Bandit.[13] Perry opined that Bandit's surrender to AACC was appropriate because she did not feel confident that Bandit could be released

[5] Respondent administered this Facebook page in 2017.
[6] Stip. Facts ¶ 3.
[7] Stip. Facts ¶ 4; Ex. S35 at 183.
[8] Stip. Facts ¶ 4.
[9] Ex. S33 at 083. This hearing is also known, alternatively, as a surrender hearing, a destruction hearing, or a civil forfeiture hearing.
[10] Stip. Facts ¶ 5.
[11] Ex. S33 at 076, 079.
[12] Ex. S33 at 081-83.
[13] Ex. S33 at 084-95, 106-110.

safely back into the community.[14] S.T.'s son outlined his family's history and relationship with Bandit, and he described various pictures of Bandit that were admitted into evidence.[15]

At the end of that hearing, the court found that Bandit could not be safely maintained and controlled within the community.[16] Whether Bandit could be transferred and adopted outside of the City was a question the court left "to the discretion of Animal Care and [its] best judgment as to what will happen with the dog next."[17] The court ordered that Bandit be surrendered to AACC for disposition, directed S.T. to pay $370.00 in impound fees, and set a future court date—February 24—for arraignment on S.T.'s pending municipal ordinance charges.[18] The court also issued a stay of execution on Bandit's destruction pending possible appeal.[19]

On February 6, O.J. appeared in Aurora Municipal Court to begin the process of appealing the court's order disposing of Bandit.[20] The court required O.J. to pay $900.00 for costs of Bandit's upkeep during the first sixty days of the appeal process, and another $450.00 per month thereafter in order to stay Bandit's destruction order.[21] O.J. paid the $900.00, as required, that day.[22]

S.T. and O.J. retained Respondent on February 13 to appeal Bandit's disposition order and to represent S.T. on the pending municipal ordinance charges.[23] The couple signed Respondent's written engagement agreement,[24] which contained certain notable provisions.

The first provision permitted Respondent to "share confidential information relating to this representation" with the couple's seventeen-year-old son.[25] A second section of the engagement agreement covered "Publicity, Media and Fundraising." It stated, "If you and we agree" that media coverage or use of social media may be of some benefit, certain "protocol shall be followed."[26] The agreement allowed the firm to provide "non-confidential information from the public record to the media, on social media and in interviews, but all

[14] Ex. S33 at 092.
[15] Ex. S33 at 096-105.
[16] Stip. Facts ¶ 5.
[17] Ex. S33 at 119.
[18] Stip. Facts ¶ 5; Ex. S35 at 184.
[19] Ex. S35 at 184.
[20] Stip. Facts ¶ 6.
[21] Stip. Facts ¶ 6; Ex. S35 at 185.
[22] Stip. Facts ¶ 6.
[23] Stip. Facts ¶¶ 7-8.
[24] Stip. Facts ¶ 2; Ex. S1. O.J. and S.T. signed the agreement on February 13. We credit Respondent's testimony that she and S.T. again reviewed the fee agreement with the help of a translator on February 24, and that he signed certain portions of the agreement then.
[25] Ex. S1 at 001. Respondent explained that she included this express provision so that she could communicate with the couple's son, who spoke fluent English and who was unusually bright, invested in the case, and able to assist his parents in navigating their relationship with her.
[26] Ex. S1 at 002.

confidences will be preserved."[27] It also permitted Respondent to use photographs of Bandit on social media and websites, and to discuss the case in "generic non-identifying terms," even at the conclusion of the representation.[28]

The same section of the agreement permitted Respondent to launch fundraisers to pay for the legal representation, either alone or in combination with the client's efforts to crowdfund. Respondent retained the right under the agreement to continue to promote fundraisers for the case until her bill was paid in full, regardless of whether the representation had ended. Respondent recalled that she discussed this provision with O.J. and her son because they wanted her to raise money for the case. She testified that she explained to them that in order to fundraise she would have to put information about their case on social media. If she did not, she said, people would not be willing to fund their case.

The final relevant provision of the agreement provided for a hourly fee and a retainer, and it noted that Respondent might "no charge" certain services in her discretion.[29] Respondent "reserved the right to review past billings and reverse discretionary write offs," however, if the attorney-client relationship were terminated before the representation was completed.[30] O.J. and S.T. did not object to this reversal provision. But they did negotiate a reduction in the size of the initial retainer; the interlineated agreement reflects that change.

On the day Respondent was retained, she appealed Bandit's disposition order with the Arapahoe County District Court.[31] As Respondent recounted, O.J. and S.T. were focused, above all else, on saving Bandit. S.T.'s criminal charges were ancillary considerations.[32] She explained that she filed the appeal for two reasons: first, because Bandit would be destroyed if the disposition order were not appealed—the stay on the order was predicated on the appeal—and second, because the appeal afforded her time to gather evidence that might change the City's position. She hoped to negotiate a global disposition in S.T.'s criminal case in which the City would agree to request that the judge lift or vacate the

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[27] Ex. S1 at 002.

[28] Ex. S1 at 002. The agreement also cautioned that the case should not be tried in the media, and it advised that certain ethical rules limit what a lawyer may say publicly in a pending case.

[29] Ex. S1 at 003.

[30] Ex. S1 at 003. Respondent explained that she included this provision so that she could write off the courtesy discounts as uncollectable debt and thus an alleged business loss for tax purposes. She limited her right to reverse discounts only to instances in which the representation terminated early, she said, because she was tired of clients firing her and then hiring her competitors, who had the satisfaction of completing the cases. As she testified, "I don't give courtesy discounts to somebody that doesn't let me finish the case and turns around and gives the case to another lawyer that then completely screws it up."

[31] Stip. Facts ¶ 9; Ex. S35 at 194-202. Respondent supplemented her notice of appeal on February 23, elaborating on the court's failure to appoint a translator for S.T., "an Armenian with permanent legal residency in the United States who has difficulty speak and understanding English" and who "speaks Russian fluently." Ex. S35 at 211.

[32] Nevertheless, Respondent filed certain motions in S.T.'s criminal case to bolster her appeal of the disposition order, including a February 14 motion for appointment of a Russian translator, in which she represented that S.T. had difficulty speaking and understanding English. Ex. S35 at 192.

disposition order. More immediately, she hoped to move Bandit while the appeal was pending out of the Aurora Animal Shelter to a "more humane" facility.

On February 20, Respondent sought a court order permitting her chosen canine behavioralist, Marie Seelmeyer, to perform an inspection and behavioral evaluation of Bandit. The court granted the motion two days later and specifically prohibited AACC from interfering in the evaluation or placing unreasonable restrictions on Seelmeyer. Respondent anticipated that Seelmeyer would be permitted to interact with Bandit, as she had with other impounded dogs in the past.

Seelmeyer went to the Aurora Animal Shelter on February 24 to evaluate Bandit.[33] Though AACC Field Service Supervisor Anthony Youngblood granted Seelmeyer access to the facility, he refused to allow her to take Bandit out of the cage for an evaluation. According to Youngblood, his stance was predicated on shelter policies drafted by Jenee Shipman, the City's Manager of Animal Services. Both Seelmeyer and Respondent were surprised and upset by this development; they believed that this new policy represented an unreasonable restriction that prevented Seelmeyer from evaluating Bandit. Respondent responded with an emergency motion on February 27, seeking a court order directing shelter personnel to remove Bandit from his cage for an evaluation.[34] A hearing was set for March 3 on the motion.[35]

The March 3 hearing lasted several hours and addressed the appropriate circumstances for and personnel to conduct an evaluation of Bandit.[36] The hearing was not meant to revisit Bandit's disposition order, however. As Shipman explained, any evaluation at that juncture would "have nothing to do" with Bandit's ultimate fate, over which AACC exercised "complete discretion." No formal process could influence AACC's decision, she said.

At the March 3 hearing, Respondent represented Bandit's owners, and Andrea Wood appeared on behalf of the City. City Attorney observed the hearing. Youngblood testified about his refusal to allow Seelmeyer to conduct an out-of-cage evaluation. Shipman testified about Bandit's behavior in the shelter and the policies governing animal evaluations. The City took the position that only five certified animal behaviorists in the state were qualified to conduct Bandit's evaluation, one of whom Shipman contacted about performing an evaluation, if needed. The court was persuaded to the City's position, and it modified its first order to require that one of the City's experts evaluate Bandit. Under the new order, Seelmeyer was permitted merely to observe the evaluation.

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[33] The same day, S.T. and Respondent attended S.T.'s criminal arraignment, where he pleaded not guilty to the three charges pending against him.

[34] Ex. S35 at 213-14.

[35] Ex. S35 at 189.

[36] *See* Ex. S34 at 165.

On March 6, City Attorney, along with other lawyers, entered an appearance on behalf of the City in S.T.'s criminal case. The next day, Respondent submitted a detailed written motion to stay the criminal case pending appeal of Bandit's disposition order.[37]

Around that time, Respondent began posting about Bandit's case to social media.[38] She posted on both her law firm's Facebook page and SAVE's Facebook page.[39] On March 7, she reported on her firm's page that the City refused to allow Bandit out of his cage for an evaluation, that she had asked for a stay of S.T.'s criminal proceeding, that she was requesting Bandit's transfer to another facility, and that Bandit's $450.00 monthly boarding fees would soon be due.[40] A few minutes later, she posted, "Aurora CO wants to kill Bandit. Please don't let them get away with it."[41] She included a link to a GoFundMe campaign to defray the legal costs of Bandit's matter.

The next day, she posted a similar complaint on her SAVE page, noting that the City refused to allow her credentialed expert to perform an evaluation and instead "called one of their buddies who works at kill shelters" to evaluate Bandit in his cage.[42] She opined, "you CAN'T evaluate him in the cage."[43] In another post, she protested the costs of a certified animal behaviorist, denounced the shelter as a "hell hole," criticized the process as depriving due process to her client, "an Armenian immigrant who speaks little English," and accused Youngblood of applying a "double standard" because he took Bandit out of his cage to an outside play area.[44]

On March 10, the City filed a motion with the Aurora Municipal Court to strike Respondent's motion to stay proceedings.[45] The City argued that Respondent's appeal was premature and could not go forward until there was a final resolution of the criminal charges against S.T. Thus, to proceed expeditiously with Bandit's appeal—the family's real concern—S.T. had to resolve his criminal charges quickly. And because the City would only plea bargain if S.T. agreed to surrender Bandit for destruction, he had, as Respondent explained, just two choices: either go to trial (which could take months), or plead guilty to all three charges.

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[37] *See* Ex. S35 at 218-20.
[38] Unless otherwise noted, Respondent's social media posts appeared on Facebook.
[39] Stip. Facts ¶ 11.
[40] Ex. S2.
[41] Ex. S2.
[42] Ex. S3.
[43] Ex. S3. Respondent returned to this theme in later posts as well. *See, e.g.*, Ex. 2 (asserting that AACC's refusal to allow Bandit out of his kennel "resulted in an incomplete evaluation"); Ex. S30 (criticizing in-cage evaluation policies without reference to Bandit's case).
[44] Ex. S3.
[45] *See* Ex. S35 at 222. The City then filed a motion on March 13 with the Arapahoe District Court to dismiss Respondent's appeal as premature. *See* S37 at 272.

Meanwhile, Respondent continued posting on social media. On March 13, she alerted donors that Bandit's family had paid his monthly upkeep fee and that the City had moved to dismiss the appeal. Respondent also remarked that the City had "unilaterally cancelled a pre-trial conference," and was trying "to force Bandit's owner to plead guilty instead of go to trial so he can have his appeal sooner."[46] "The Aurora City Attorney's office makes me ILL," she fumed.[47]

During the week of March 13, Respondent tried to bargain with the City Attorney's office, several times offering pleas in exchange for Bandit's release, transfer, or surrender to a no-kill shelter.[48] City Attorney confirmed that she had "multiple conversations" during this time period in which Respondent repeatedly asked her or Wood to agree to release Bandit or transfer him to another facility. But City Attorney rejected all of Respondent's proposals and refused to reconsider the City's position.

By March 20, Respondent had decided to change her approach. She recommended that S.T. plead guilty in open sentencing to all three criminal charges so that Bandit's appeal could move forward without additional delay. Withdrawing her motion to stay the criminal proceeding, Respondent declared that S.T. did not want his criminal charges "to hinder the progress of the appeal" and that he wished "to be free to pursue the appeal of the court's order of surrender/destruction of the family dog Bandit."[49]

Respondent continued to post on social media while awaiting S.T.'s sentencing hearing. On March 21, the day after she moved to withdraw her request to stay S.T.'s criminal proceedings, she posted on her firm's Facebook page "a happy update" about one of her old cases, which involved the conviction of a man formerly defended by a lawyer who had once been married to City Attorney. Although unrelated to that old case, Respondent remarked in the post that City Attorney had once caused a "major scandal when she (allegedly) had an affair" with a city client.[50] In this post, Respondent mentioned City Attorney's former name, her current name, and her current employment position.

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[46] Ex. S4. A conference was set for March 14. On March 13, City Attorney went to court without Respondent present, spoke to the judge, and asked him to postpone the March 14 hearing. City Attorney testified that she did so because she realized that the conference could not be heard on that particular day, which had been reserved for jury trials. The conference was later reset.

[47] Ex. S4. Around this time, Respondent was also oppugning on social media AACC's treatment of other dogs—the owners of whom she did not represent—including a dog named Capone. *See* Ex. 1 (law firm and SAVE posts lashing out against "Shipman and her merry band of murderers," who Respondent said were "at it again, now trying to kill this 10 year old Shepherd because they claim it's a wolf hybrid"); Ex. 2 (mentioning both Capone and Bandit); Ex. F (sharing and commenting on the City's announcement that it would return Capone to his family).

[48] *See* Ex. S34 at 166 (Respondent's billing). The Hearing Board accepts Respondent's representations, as reflected in her billing records, that many of those conversations were with Andrea Wood, a lawyer in the City Attorney's office. We also find that Respondent was aware that Wood sought guidance and approval from her superiors, including City Attorney, about these various offers.

[49] Ex. S35 at 227 (motion to withdraw motion for stay).

[50] Ex. S5 (suppressed).

Respondent testified that less than a week before her posting she had learned about the alleged scandal—which purportedly had occurred about a decade prior—from Aurora city council members, and she defended the post on the grounds that there was "nothing untrue about these things." She also said that she posted the sentence to alert the public to a "corruption issue," claiming, "I wanted the public to know that [a person in a significant leadership position in the City Attorney's office] was not necessarily an ethical person."

City Attorney did not share the same view of Respondent's motivations. Though City Attorney acknowledged that she could not conclusively say what Respondent hoped to achieve by posting this information, City Attorney considered several possibilities, including Respondent's desire to gain advantage in Bandit's case, to apply pressure, as a means of punishment or retribution, or simply to make clear the consequences of thwarting her requests. But City Attorney confidently drew a direct line between her discussions with Respondent about Bandit's disposition and the post: "clearly I was the decision maker that [Respondent] was talking with and [was] not giving her the answers she wanted."[51] City Attorney, who was still visibly upset about the post and its aftermath when she testified at the disciplinary hearing, said that the post embarrassed and humiliated her, particularly with those people who had not been employed by the City years earlier and thus who had not heard of the allegations.

Also around this time, Respondent encouraged her social media SAVE page followers to "VOICE YOUR CONCERNS about the inhuman treatment of Bandit!!!"[52] Fulminating that the City "would rather waste your tax dollars in court and try to kill him than let a family pet with one bite get behavioral modification at a rescue that's offered to take him in and relocate him outside of the city," she posted Shipman's title, phone number, and email address. Shipman testified that soon after this post was made, she received close to 100 voicemails and hundreds of emails maligning her character and decisions, and threatening her and her family. Based on these "frightening and intimidating" communications, Shipman said, police patrols were assigned to watch her home and her child's school.[53]

On March 29, Respondent represented S.T. in his sentencing hearing, and City Attorney appeared for the City. An interpreter was present. Respondent insisted that the judge issue a full advisement, and City Attorney recited the factual basis of the charges. S.T. pleaded guilty to all three charges. As part of a sentencing concession request, Respondent asked the court to reconsider the original disposition decision, given that a no-kill rescue shelter was willing to adopt and rehabilitate Bandit.[54] But the court both declined to

[51] City Attorney also mentioned that Respondent had never posted about her or corruption issues before, though they had known each other for many years and the City had been wracked by several corruption scandals in the recent past.

[52] Ex. S6.

[53] Shipman conceded that she could not be certain whether the communications were related to Bandit's case, Capone's case, or the case of another dog altogether.

[54] *See* Ex. 36 at 253.

question the disposition order and concurred with its resolution. It fined S.T. $910.00 and continued Bandit's stay of execution pending appeal.

That same day, both the City and Respondent (through her SAVE page) posted on social media about Bandit's case. The City provided details about the sentencing hearing, and Respondent again exhorted her followers to express their opinions about the City's decisions and "the deplorable conditions" in which she believed Bandit was being kept.[55] Respondent continued to post about Bandit on her SAVE page in early April, discussing details of the case to illustrate her due process arguments on appeal and reposting Shipman's contact information.[56]

By mid-April, Respondent's relationship with Bandit's family had become strained. Respondent had been working to find other facilities that would accept Bandit during the appeal, and she had begun drafting a motion requesting the dog's interim placement elsewhere. On her firm's Facebook page she described her recent efforts, including payment of Bandit's monthly bond, and she noted that Bandit's family had "not been able to replenish their retainer, so I'm working solely on donations. . . ."[57]

O.J. testified that her family had meanwhile grown dissatisfied with the representation because they were not noticing any results.[58] Around April 11, O.J. told Respondent to stop work on the case until the family gave her the go-ahead. Respondent apparently posted an update on GoFundMe around the same time reporting that Bandit's owners had told her not to work on the case until further notice.[59]

About a week later, on April 19, Respondent emailed O.J. and her son, warning that she would not "let clients tell me to stop working on a case when the dog is impounded" and that she would withdraw unless O.J. communicated with her about how to handle Bandit's case.[60] O.J. responded the same day in the subject line of the email, saying, "Sorry. I will send you letter today or tomorrow thank you."[61] Respondent emailed again on April 20. She asserted, "I can't be kept in limbo being told what I can and cannot do," and she asked O.J. to respond.[62]

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[55] Ex. S7. Respondent, on her firm's page, also appears to have reposted a message from a user named "Save Bandit," who urged followers to "contact [City Attorney] and tell her how disgusted we are with her and the city of Aurora!" Ex. 3.
[56] Ex. S8.
[57] Ex. S9.
[58] O.J. also testified that she was "shocked" to see photos and video of Bandit posted on social media, though she did not explain why, other than to say that she did not believe that the posts should have been made "in this manner."
[59] Ex. 4.
[60] Ex. S11 at 24.
[61] Ex. S11 at 27.
[62] Ex. S11 at 25.

On April 24, the family replied, terminating the representation and requesting a quick return of a complete copy of the case file and an accounting of the money she raised from crowdfunding.[63] Respondent promptly posted on her firm Facebook page that she had been discharged and that "[the clients] stopped communicating with me after I made the bond payment on 4/11, other than telling me not to work on the case, which I said I couldn't do because that was not in Bandit's best interest."[64] She mentioned that she would be filing a motion to withdraw the next day, and she apprised her followers and donors that "[a]ll the money that's been raised has gone into the case with detailed invoices sent to the clients (plus over $2k I incurred that I'll probably never see back)."[65] In response to some hostile comments, Respondent added, "I had written off thousands of dollars in fees and had not asked for another penny. I think they are trying to get the money that was paid for my fees through the fundraiser."[66] She continued, "Per a clause in my contract, all that goes to pay my costs and fees. Also per a clause in my contract, they now owe me all the fees I previously wrote off as a courtesy."[67]

Jay Swearingen, a lawyer at TALC, emailed Respondent on April 25 to effect a substitution of counsel. He mentioned that Respondent could either give his new clients a copy of their file directly or send it to him.[68] Respondent retorted, "I'm sending them a letter today. They owe me $2500. I'll need them to pay that before I release any files. You should be able to get what you need online anyway."[69] Swearingen later filed the substitution of counsel form and became counsel of record.[70]

Respondent had in fact penned a very lengthy letter to O.J. and S.T. In the letter, dated April 25, she explained the status of the case and attached a copy of the GoFundMe distribution schedule. She also included every bill she had sent them, along with an invoice for $2,4485.84. The invoice accounted for new billing and courtesy write-offs that she had added back in, which she emphasized was in her discretion. "I still expect payment for the work I have done before I provide my file to anyone," she cautioned.[71] Respondent closed by predicting that the family's actions had "not only probably sealed Bandit's fate, but ha[d] harmed [her] reputation in the animal law community."[72] Bandit's owners never paid her bill, and Respondent never sent a copy of the file to her former clients or to Swearingen.

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[63] Ex. S12; Stip. Facts ¶ 13.

[64] Ex. 4 at 1. *See also* Ex. 5 (a GoFundMe update in which Respondent reported, "client has asked me to withdraw. I will be filing a motion asking the judge to allow it. Clients owe me thosands [sic] in unpaid fees, but I'm not trying to recoup it yet. Per my contact [sic] I can via fundraising").

[65] Ex. 4 at 1.

[66] Ex. 4. at 2.

[67] Ex. 4 at 2. Respondent engaged in additional back-and-forth with another commenter, explaining the niceties of withdrawing from a case and noting that Bandit's owners "don't have a new attorney to substitute in my place."

[68] Stip. Facts ¶ 15.

[69] Ex. S13.

[70] Stip. Facts ¶ 16.

[71] Ex. S14 at 043

[72] Ex. S14 at 043.

On April 26, Respondent posted an update on her firm's Facebook page. Among other things, she noted that Bandit's owners hired TALC; that the clients led her to believe that "they couldn't spend any more money, that it was costing too much"; that she was working off of donations from GoFundMe; and that TALC is sloppy and made "no less than 5 errors" in their substitution of counsel. She concluded, "So I really got bamboozled with Bandit's case, and most likely screwed out of $2500 because the client didn't replenish the retainer when it ran out."[73]

TALC pursued a different legal strategy in Bandit's appeal. It allowed the appeal in Arapahoe District Court to lapse and instead filed a civil rights lawsuit in federal court.[74] TALC pursued a similar media strategy, however. As Respondent recalled, TALC went on a "media blitz," which intensified as Bandit's legal case began to crumble. Ultimately, the state court lifted the stay on Bandit's execution. The day before Bandit was to be put down, in March 2018, TALC lawyers and O.J. appeared on a Facebook live feed, and they were interviewed on television by KDVR Fox31. AACC destroyed Bandit the next day.

Diamond's Case

On April 29, 2017, B.D. and his adult foster son, M.H., retained Respondent per a written engagement agreement signed that day.[75] The representation related to an incident that occurred on April 7, when the family's pit bull, Diamond, escaped from the family home and was picked up and impounded by the City.[76] Respondent, in fact, had been aware of Diamond's impoundment well before she was retained; on April 18, Respondent posted on her firm's Facebook page that she had given B.D. "a 30 minute consult that he could not pay for to get him started," and she shared B.D.'s GoFundMe link, accompanied by her own call for donations to cover the cost of the consult.[77] Respondent later reposted a post by B.D. in which he announced that he had retained her.[78]

B.D. and M.H. retained Respondent for several reasons: first, to represent B.D. against the criminal municipal ordinance charges pending against him in Aurora Municipal

[73] Ex. S15.
[74] In September 2017, Respondent posted about the case on her firm's page, criticizing TALC for failing to file a brief in the state court appeal. *See* Ex. S32.
[75] Stip. Facts ¶ 17; Ex. 6.
[76] Stip. Facts ¶ 18.
[77] Ex. S10. B.D. and M.H. posted at least twelve updates to their GoFundMe online campaign in April and May 2017. In addition to their crowdfunding efforts, B.D. and M.H. leveraged traditional media coverage to promote their case. Even before they retained Respondent, they appeared on a Fox31 television news feature in which they discussed personal information about themselves, including M.H.'s medical diagnoses. *See* Ex. S40 (April 25 television clip discussing M.H.'s diagnoses, his status as a Social Security recipient, and the charges against B.D.); Ex. A (Fox31 article dated April 25, discussing personal information); Ex. B (B.D.'s GoFundMe posts discussing the consult fee, his decision to retain Respondent, and the significant legal costs involved).
[78] Ex. S16.

Court case number K64741, including owning a restricted breed, failure to license, and dog running at large;[79] second, to seek Diamond's licensure as a restricted breed service dog for M.H.;[80] and third, to represent the family at Diamond's disposition hearing. Because service dogs were exempt from the City's pit bull ban, Respondent planned to focus her efforts on securing Diamond's service dog licensure. With Diamond licensed as a service dog, she believed, the charge against B.D. for owning a restricted breed would be dropped.

Respondent's engagement agreement with B.D. and M.H. contained a publicity, media, and fundraising section; the language in that section mirrored the language used in Respondent's engagement agreement with Bandit's owners.[81] In line with this agreement, Respondent almost immediately began posting on social media to raise funds.[82] On April 30, she posted information about the family's history, including that B.D. found M.H., then a minor, "living under a bridge and took him in," eventually becoming M.H.'s caregiver.[83] M.H., she explained, "has Autism spectrum disorder (ASD), high functioning Savant variety," and "[t]he one thing in [M.H.]'s life that consistently helped him overcome the often disabling symptoms of his disorder was his dog Diamond."[84] Respondent announced that she was representing the family and asked for donations to help free Diamond.[85]

On May 1, Respondent sent a letter to Shipman in which she stated, "I have concluded that Diamond is an individually trained sensory/social service dog for [M.H.], whom the Social Security Administration has deemed to be 100% disabled due to Autism Spectrum Disorder, Bipolar Disorder and ADHD."[86] She alerted Shipman that she would soon be filing a request under the Americans with Disabilities Act for reasonable accommodation from the City.

That evening, Respondent posted on her firm and SAVE Facebook pages an account of a dog who, in her opinion, had been wrongfully destroyed. "Jenee Shipman spew your lies to the press, to the lawmakers who question you about [breed specific legislation]," she wrote.[87] "You don't transfer them out, you dispose of them in bodybags."[88] In a firm post the following day, she again assailed Shipman's evaluation policies and invited onlookers to attend a hearing the next morning "on another dog [the City] want[s] to kill," specifically noting, "If you want to see HOW SCREWED UP AURORA ANIMAL CONTROL IS, come to division 4 at 8am."[89]

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[79] Stip. Facts ¶ 20.
[80] Stip. Facts ¶ 19.
[81] Stip. Facts ¶ 21.
[82] Unless otherwise noted, Respondent's social media posts appeared on Facebook.
[83] Ex. S18.
[84] Ex. S18.
[85] Ex. S18.
[86] Ex. S39 at 295.
[87] Ex. S19.
[88] Ex. S19.
[89] Ex. S20.

Respondent submitted a formal request to license Diamond as a service dog on May 4, in which she repeated M.H.'s background and diagnoses, described his relationship with Diamond and the functional areas in which Diamond had been trained to assist him, and included other personal information about the family.[90] This letter was subject to disclosure under the Colorado Open Records Act request, Shipman testified. On May 5, Shipman responded via letter confirming that Diamond would be released to her owners if the application for service animal licensure was complete and all conditions were met.[91]

On May 6, Respondent posted again on her firm's page, alerting her followers to the "good news" that Diamond would be released "hopefully Monday after [M.H.] sees his mental health provider in the morning!!"[92] She added, "Funds are still needed because virtually all the money donated to date (with [B.D]'s funds being held up but hopefully paid to the Firm Monday), we are going to be close to zero and will need to pay for a little more attorney time . . . ."[93] She followed up with posts on May 8 and 9. She reported that she had submitted questions about the licensing process (and complained about the City's response); that she was awaiting information about [M.H.]'s mental health provider visit; and that "[t]here is currently a balance due on the clients' account of just under $1400" so she would "really appreciate any funds paid directly to . . . GoFundMe."[94]

Respondent and B.D. appeared in court on May 10. B.D. completed the mandatory application,[95] and the City stipulated to Diamond's release on more than ten conditions. Among them was a requirement that Diamond be controlled on a four-foot leash when not in her home or in a six-sided enclosure. Under the stipulation, Diamond was subject to immediate surrender if any of the conditions were violated.[96] The court set a pretrial conference for May 19 on the pending municipal ordinance charges against B.D.,[97] and Diamond was released to her owners.[98] Respondent posted the news on her firm's page that same day. She recited M.H.'s diagnoses, the history of the matter, and the conditions

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[90] Ex. S39 at 296-99.

[91] Ex. S39 at 300. On May 4, Respondent posted on her firm's page that her formal request to license Diamond had been denied, despite M.H.'s diagnoses. But she later added an update questioning a discrepancy between the denial email she had received and a City statement on Fox31 KDVR.com disclaiming such a denial. *See* Ex. S21. Around that time, Respondent lambasted on her firm Facebook page a person "who is friends with [an] Animal Control officer" for posting "vicious lies" that M.H. had "fak[ed] his 100% disability rating from Social security for autism, Bipolar and ADHD." Ex. S24. "I assure you it's not a lie," she said, "I've read his mental health records . . . ." Ex. S24. Respondent also castigated City employees "who have contempt to the level of rage towards the disabled individual's caregiver, who may be marginalized in society for other reasons not related to disability . . . ." Ex. S24.

[92] Ex. S22.

[93] Ex. S22.

[94] Ex. S23.

[95] *See* Ex. 39 at 305-06.

[96] *See* Ex. S41 at 308-10.

[97] Stip. Facts ¶ 24.

[98] Stip. Facts ¶ 23.

attached to Diamond's release, and she again sought contributions: "[B.D.] has not been able to pay [me] anything from his fundraiser as of yet due to some type of issue, so this GoFundMe is [my] only source of funding unless he is able to make payment in the future."[99]

Only two days later, on May 12, Diamond was again found running loose.[100] Around noon, Respondent posted on her firm's page, "Aurora Animal control is implicated in breaking down [B.D.]'s door and taking Diamond again. She's locked up again."[101] Three hours later Respondent posted an update noting that the police had investigated and found no evidence of a recent break in. "At this point all I can report for certain is that Diamond was picked up in a neighbor's yard and she's currently impounded and facing another destruction hearing," she keened.[102] In another post the same day, however, she turned to the matter of financing: "To date, I have worked tirelessly on this case and only been paid $200 from [B.D.], which he paid me this morning."[103] She encouraged her followers to "spread the word!"[104]

Respondent timely appeared at the pretrial conference on May 19. B.D. appeared much later. Respondent moved to withdraw, a request that the court granted.[105] Because a stipulated condition of Diamond's release was violated, Diamond was surrendered to AACC and destroyed.

Respondent's representation lasted just twenty-one days, but Respondent continued to discuss the matter on social media. Right after the conference, Respondent posted, "I can't say what happened in court this morning because I no longer have client permission because I withdrew. I will say I'm owed almost $3500 for all my work."[106] Her post implied that Diamond's family begged her to save their pet but then failed to pay. About a week later she commented on [B.D.]'s GoFundMe page that a detective investigating the use of the crowdfunding money told her that [B.D.] claimed the math "didn't add up" on her invoices.[107] "No more being taken advantage of," she ruminated:

> I did the work, got Diamond released . . . and she was let out and impounded again less than 48 hours later. Then the former client has the gall to not pay me the monies other people donated to him for this work, and claims he's

[99] Ex. S25.
[100] Stip. Facts ¶ 25.
[101] Ex. S26.
[102] Ex. S26.
[103] Ex. S27. On May 13, Respondent mentioned on her firm's page that she was currently owed about $2,800.00 for her work on Diamond's case. "It's not my fault she's back where she was," Respondent said. Ex. S28 at 68.
[104] Ex. S27.
[105] Stip. Facts ¶ 26.
[106] Ex. S29.
[107] Ex. S31.

unhappy with the results. Well at least I showed up for court whenever I was expected. And I didn't let her out to run away again.[108]

Respondent testified that she recovered the money [B.D.] had crowdfunded by filing a GoFundMe beneficiary claim. GoFundMe's insurance policy ultimately paid out the funds.

Rule Violations

Colo. RPC 1.5(g)

Colo. RPC 1.5(g) states, "Any agreement that purports to restrict a client's right to terminate the representation, or that unreasonably restricts a client's right to obtain a refund of unearned or unreasonable fees, is prohibited." The People argue that Respondent's engagement agreement ran afoul of this rule because it authorized her to reverse "discretionary write offs" if her clients terminated the representation before completion.[109] This provision operates as a penalty on a client's decision to terminate, the People contend. They buttress their claim by noting that Respondent did in fact invoke this penalty against O.J. and S.T. After the couple terminated her representation, she issued new bills in which she reversed her courtesy discounts, and she demanded payment of those bills before she would return their file.

Respondent disagrees. She observes that O.J. and S.T. agreed to this provision—yet negotiated other changes to the agreement—and that the provision had no actual affect on their decision to terminate the representation and to seek other counsel. She also counters that her clients are not entitled to free or low-fee legal services. Finally, she contends that her return of the file to O.J. and S.T. is not germane to her obligations under Colo. RPC 1.5(g) and, in any event, Colorado's retaining lien statute[110] permitted her to keep their file until she was paid for her legal services.

We find that Respondent's fee agreement purports to restrict her clients' right to terminate her representation in violation of Colo. RPC 1.5(g). We begin with the precept that "a client must, and does, have the right to discharge the attorney at any time and for whatever reason."[111] A necessary corollary is that a lawyer may not penalize a client for choosing to terminate the relationship.[112] These principles are undergirded by longstanding public policy that treats the attorney-client relationship as a special fiduciary relationship.[113]

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[108] Ex. S31.
[109] Ex. S1 at 003; Ex. 6 at 3.
[110] Respondent cites C.R.S. § 13-95-115 (formerly C.R.S. § 12-5-120) in support.
[111] *Olsen & Brown v. City of Englewood*, 889 P.2d 673, 676 (Colo. 1995).
[112] *Id; see also In re Sather*, 3 P.3d 403, 410(Colo. 2000); *The Florida Bar v. Hollander*, 607 So.2d 412, 415 (Fla.1992) (disapproving a fee agreement that had the effect of intimidating a client from exercising the right to terminate representation).
[113] *Olsen & Brown,* 889 P.2d at 676.

Viewed against this backdrop, we consider the plain language of the rule. The rule encompasses not only agreements that in fact restrict termination but also those agreements that *purport* to restrict termination. We believe that to give meaning to this word we must interpret Colo. RPC 1.5(g) to prohibit any fee agreement that objectively tends to or seems to have the effect of restricting a client's right to terminate the relationship.[114] The rule applies, we find, regardless of whether the agreement actually prevents the client from terminating; if the agreement could be read to discourage the client from exercising the right to terminate the representation, the rule is implicated.

Our analysis draws on the jurisprudence behind a parallel provision in Colo. RPC 1.5(g), which prohibits nonrefundable fees and retainers. This provision codified the Colorado Supreme Court's holding in *In re Sather* disapproving of the then-widespread practice of lawyers collecting nonrefundable flat fees.[115] While *Sather*'s holding is not applicable here, we find its rationale instructive. The *Sather* court observed that a nonrefundable fee may cause a client to "fear loss of the funds" and thus "refrain from exercising [the client's] right to discharge the attorney."[116] And the court expressed concern that "non-refundable fees may discourage the client from discharging the attorney for fear that the client will not be able to recover advance fees for which the attorney has yet to perform any work."[117] We read Colo. RPC 1.5(g), the rule that was drafted in *Sather*'s wake, as endorsing the principle that a client's right to terminate must remain unfettered, regardless of the language of—or the client's decision to sign—the agreement.[118]

Here, the reverse discount provision in Respondent's engagement agreement operates as a financial disincentive to her clients to terminate the relationship. Respondent testified as much, noting that she added this provision because she was frustrated when, mid-case, clients would fire her and hire competitors in her stead. We credit her testimony that she never intended to collect on the reversals. Even so, the reverse discount provision, as written, could have the effect of dissuading cost-conscious clients from terminating her representation. That the provision did not actually deter O.T. and S.J. from finding new counsel in this particular instance is of no import: other clients, facing slightly different circumstances, could well have felt hampered in pursuing their choice of counsel, fearing

[114] *See* Black's Law Dictionary (9th ed. 2009) (defining "purport" as including "to profess or claim," and "to seem to be").

[115] *Sather* instructed the Colorado Bar Association to propose a formal rule governing the issues addressed in that opinion. The rule that ultimately was promulgated, Colo. RPC 1.5(g), not only forbade nonrefundable flat fee agreements but also extended beyond *Sather*'s holding to expressly prohibit any agreement purporting to restrict a client's right to terminate.

[116] *Sather*, 3 P.3d at 410.

[117] *Id.* at 413.

[118] We interpret the rule as categorically prohibiting both nonrefundable flat fee agreements and provisions that restrict a client's right to terminate, as the rule offers no exception if the client provides informed consent.

that Respondent might reimpose previously discounted fees. For this reason, we conclude that Respondent violated Colo. RPC 1.5(g).[119]

Colo. RPC 1.6(a)

Colo. RPC 1.6(a) prohibits a lawyer from revealing information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is otherwise permitted under Colo. RPC 1.6(b).

The People claim that Respondent violated this rule repeatedly in both Bandit's and Diamond's cases when she posted client information on social media. Specifically, the People contend that in Bandit's case Respondent impermissibly disclosed S.T.'s status as an Armenian immigrant who speaks little English; the details and funding of Bandit's case; notice of her termination from Bandit's case; and her post-termination ruminations about Bandit's case and her former clients.[120] The People also contend that Respondent violated this rule in the Diamond representation by posting information about B.D.'s free consult and his decision to hire her; the full names of both clients; M.H.'s diagnoses, his status with the Social Security Administration, his desire to have Diamond licensed as a service animal, and the existence and timing of his appointments with mental health providers; the details and funding of Diamond's case; and her post-termination ruminations about Diamond's case and her former clients.[121]

Respondent argues that her posts all fell within the ambit of the Colo. RPC 1.6(a) exceptions. She points to her fee agreement as authorizing her to disclose any "non-confidential information from the public record." Moreover, she emphasizes that her disclosures were also impliedly authorized in order to carry out the purposes of the representations. She testified that client authorization to make certain disclosures is "inherent" in crowdfunding legal fees, as "people won't donate on a case if there's no reason to donate." Because she could not raise funds unless she provided information to donors, she reasoned, her clients' implied waiver of Colo. RPC 1.6(a) as to discussions of finances and details of their cases was "part and parcel" of the clients' permission to raise funds on their behalves. "Once you have gone that route and you have been taking people's

[119] Given this finding, we need not address Respondent's failure to return to S.T. and O.J their file. Nor is it necessary to consider her retaining lien defense. In any event, we tend to think—as Respondent asserts—that allegations concerning her handling of their client file is unrelated to Colo. RPC 1.5(g) and would have been better lodged, if at all, under another rule.

[120] *See* Compl. ¶¶ 15-16, 24, 36, 43, & 70. Because the People's Claim II does not detail each specific instance that they allege Respondent disclosed confidential client information, we look to the factual allegations of the complaint to delimit the scope of the claim, though we do not adopt some of the allegations' characterizations—for instance, the putative dates of the posts or the cases to which the posts ostensibly relate.

[121] *See* Compl. ¶¶ 37-39, 51-54, 56-57, 65-66, & 68-69.

money," she worried, if information is not given to donors "are you then committing fraud upon the people who have donated money in the case?"

Colo. RPC 1.6 "applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source."[122] This rule has been treated as a sweeping proscription against disclosure of any client information. Nevertheless, Respondent's engagement agreement specifically carves out an exception allowing her to post non-confidential information from the public record while still preserving confidences.[123] Respondent argues that she intended this "public record" exception in her engagement agreement to mean any information in the public domain; the People advocate for a much narrower definition of this term, to include only "a record that a governmental unit is required by law to keep."[124]

We are swayed, in this particular instance, to apply Respondent's more expansive definition, for a few reasons. First, Respondent's agreement modifies "information in the public record" with the adjective "non-confidential." Under a narrower definition, all information in the public record would be considered non-confidential, rendering the "non-confidential" modifier superfluous. In contrast, a more capacious definition would give meaning and effect to the modifier by making clear that Respondent could share any information in the public domain that was not meant to be kept a secret.[125] Second, when we consider the language with reference to the agreement as a whole and the context in which it is used, we find that the thrust of the publicity and fundraising section is "to educate the public about the draconian nature of Colorado's dangerous dog laws and/or raise funds for [the client's] legal fees/costs" while taking care to suppress only information that is "harmful to [the client's] legal matter or the Firm's ability to represent [the client]."[126] Respondent's proffered definition better reflects those objectives. And third, we received no credible testimony that a client interpreted the language to apply only to information contained in court records or governmentally held documents.[127]

Using Respondent's broader definition of the term "public record" as it appears in her engagement agreement, we examine that public record. It reveals that in both cases, Respondent carefully timed most of her social media posts to keep one step behind development of the public record. We highlight just a few examples.

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[122] Colo. RPC 1.6 cmt. 3.
[123] Ex. S1 at 002.
[124] *See* Black's Law Dictionary (9th ed. 2009).
[125] *See* Black's Law Dictionary (9th ed. 2009) (defining "confidential" as information "meant to be kept a secret," and a "confidence" as "a communication made in trust and not intended for public disclosure").
[126] Ex. S1 at 002.
[127] While ambiguities in a lawyer's engagement agreement should be construed against the drafter, *Elliot v. Joyce*, 889 P.2d 43, 46 (Colo. 1994), we are wary of mechanically applying this rule of construction here, given that Respondent convincingly testified about the intended meaning of the phrase. We are also mindful that this is a disciplinary proceeding in which the People must prove by clear and convincing evidence that Respondent violated a Rule of Professional Conduct.

On January 13, during Bandit's public disposition hearing, S.T.'s native language and his level of fluency in English was discussed, and on February 23, Respondent filed a supplemental notice of issues on appeal in which S.T. was identified as an Armenian immigrant.[128] It was not until early March, however, that Respondent disclosed in a post that S.T. is an Armenian immigrant who spoke little English.[129] Likewise, on March 22, Respondent posted details about Bandit's case, including information about the attack, the victim, Bandit's family, her representation, the appeal, AACC's refusal to allow an out-of-cage-evaluation, and efforts to find a new boarding facility.[130] But all of this information had already been incorporated in public pleadings, filings, and hearings in Bandit's case.[131]

Likewise, in Diamond's case, Respondent generally posted only after information had been released in the public sphere, either by her clients or in government records. Respondent reposted B.D.'s announcements that he had consulted with and later retained her.[132] In several posts on April 30 and May 4, 6, 8, and 10, she disclosed M.H.'s diagnoses and his social security status, and she discussed the bases for licensing Diamond as a service animal.[133] But B.D. and M.H. had already introduced those topics in an April 25 television interview with Fox31.[134] Further, by May 4, all of those facts had been incorporated as part of the public record via Respondent's letters of May 1 and 4 to AACC.[135]

We also find that Respondent's disclosures during the cases, including the sums raised and the funds needed to continue the representations, were in furtherance of her crowdfunding efforts and impliedly authorized by her clients to accomplish their goals. She apprised her clients in her engagement agreement and in follow-up discussions that she would be posting to social media about their need for funding, just as they had agreed that she would do. As Respondent explained, she considered these financial disclosures critical to raising funds to cover her clients' ongoing legal expenses.[136] Respondent's posts to fundraise while she was counsel of record—including those about Bandit's bond payment and his family's depleted retainer, B.D.'s inability to give her a full retainer or make other payments, and the balance she was owed for her work on Diamond's case—all were impliedly authorized by the clients' permission allowing Respondent to crowdfund for them.[137]

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[128] *See* Ex. S33 at 79; Ex. S35 at 211.
[129] *See* Ex. S3 at 014; Compl. ¶ 16.
[130] *See* Ex. 2; Compl. ¶ 24.
[131] *See, e.g.,* Ex. S33 at 76-110, 184; Ex. S35 at 194-202 & 213-15.
[132] *See* Ex. B; Ex. S16; Compl. ¶¶ 36-37, 52.
[133] *See* Exs. S21-S22, S24; Compl. ¶¶ 53-54.
[134] *See* Ex. S40.
[135] *See* Ex. S39.
[136] *See* 173 Am. Jur. Proof of Facts 3d 289 (2019) ("Rule 1.6 permits an attorney to exercise his or her professional judgment to determine what disclosures are necessary to the appropriate representation of the client."); *Lewis v. Statewide Grievance Cmte*, 669 A.2d 1202, 1205 (Conn. 1996) (same).
[137] Exs. S2, S4, S9, S16, S22-S23 (as to the amount of funds left and the balance due), S25, S27-S28.

In our view, then, most of Respondent's social media posts were either permitted under the terms of her engagement agreement or impliedly authorized by her clients in order to carry out the representation. But eight of Respondent's social media communications fall into neither category, and for this reason we find that Respondent violated Colo. RPC 1.6(a).[138] We discuss these posts in somewhat greater depth.

One of Respondent's posts divulges that B.D. found M.H., then a minor, "living under a bridge and took him in."[139] And two of Respondent's posts mention in passing M.H.'s scheduled visits to his mental health provider.[140] Respondent learned this information about her clients in the course of the representation. This information did not exist in the public domain before Respondent introduced it. Nor did Diamond's family impliedly authorize the information's disclosure, as its release had no reasonable purpose in advancing the objectives of the representation. We find that Respondent's unauthorized disclosures about the provenance of B.D. and M.H.'s relationship, as well as the existence and timing of M.H.'s mental health appointments, impermissibly revealed information relating to her representation of Diamond's family, thereby violating Colo. RPC 1.6(a).

Equally serious are Respondent's post-termination disclosures about her clients. In Bandit's matter, Respondent posted on April 24 that she had just been terminated.[141] She made public her attorney-client communications, including O.J.'s instructions to her to cease work on the matter, her discussions with Bandit's family about the termination, and the terms of their engagement agreement. Even more grievous, she speculated darkly about their motives: "I think they are trying to get the money that was paid for my fees through the fundraiser."[142] In responding to comments to her post, she seemed compelled to justify her inactivity on the case and the fees that she had billed. On April 26 she posted again. She updated her followers that the clients had expressed concern about costs and that her work had been funded by donations. And she accused Bandit's family of "bamboozl[ing]" her and "screw[ing her] out of $2500."[143] Much later, on September 8, she posted about the status of the case, reminding her followers that she had been fired and TALC had been hired in April.[144]

Respondent made similar postings about Diamond's case. On May 19, she announced that she had withdrawn from the representation and was no longer at liberty to disclose details about the case. But then she added, "I will say that I'm owed almost $3500 for all my work."[145] And she implied that Diamond's family had begged her to take the case and then

[138] These eight posts are found in exhibits 4, S15, S18, S22, S23, S29, S31, and S32.
[139] Ex. S18.
[140] Ex. S22 (May 6 post); Ex. S23 (May 8 post).
[141] Ex. 4.
[142] Ex. 4 at 2.
[143] Ex. S15.
[144] Ex. S32.
[145] Ex. S29.

failed to pay her. About a week later, she commented on B.D.'s GoFundMe page, contesting B.D.'s assertions that her "math didn't add up."[146] She also accused B.D. of withholding from her funds that she had earned, revealed that he had failed to appear in court as expected, and blamed him for letting Diamond run away again.[147]

These five posts, all made after Respondent's attorney-client relationships ended, disclosed information that she had learned about or from her clients in the course of representing them. None of the clients had expressly agreed to Respondent's release of this information, as their engagement agreements only permitted her to "comment, write about or discuss" their cases in "generic non-identifying terms" when the representations had concluded.[148] Similarly, none of the clients impliedly authorized these disclosures: these five posts, by definition, could not have been made to carry out the representations, which had already terminated. And most egregious, several of Respondent's posts needlessly disparaged her clients and revealed attorney-client communications, flouting the bedrock duty of loyalty on which Colo. RPC 1.6(a) is founded.[149]

Colo. RPC 3.6(a)

Colo. RPC 3.6(a) provides that a lawyer participating in an investigation or litigation of a matter "shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." The reach of Colo. RPC 3.6(a) is limited, however, by the safe harbor provisions of Colo. RPC 3.6(b), which permit a lawyer, among other things, to state "information contained in a public record" and "the scheduling or result of any step in litigation."[150]

The People's third claim alleges that Respondent violated Colo. RPC 3.6(a) by posting on social media specific statements, allegations, and arguments about Bandit's and

[146] Ex. S31.
[147] Ex. S31.
[148] Ex. S1 at 002.
[149] Respondent's forays into crowdfunding on behalf of her clients illustrate well some of the pitfalls inherent in this funding model, including the improper prioritization of donors' demands for information over clients' rights to confidentiality. Nevertheless, the few extant ethics opinions on this topic appear to agree that crowdfunding by lawyers to pay their fees in specific cases is permissible, with appropriate protections. These opinions emphasize that the strictures governing a lawyer's acceptance of legal fees from third parties also apply in the crowdfunding context. *See, e.g.,* D.C. Legal Ethics Opinion 375 (2018) (Ethical Considerations of Crowdfunding) (cautioning that a lawyer must not permit interference with the lawyer's independent professional judgment or with the client-lawyer relationship, and must guard against sharing a client's confidential information with donors, given that "the informal nature of communications made through social media platforms warrants a reminder of this duty when using these platforms for crowdfunding"); Philadelphia Bar Association Professional Guidance Committee Opinion 2015-6 (2015) ("In order to seek funds on a crowdsourcing site, the lawyer will of course have to reveal certain information about the matter sufficient to interest the public in making contributions. . . . Care should be taken, of course, to keep information revealed about the client and the matter to the minimum necessary to achieve the purpose.").
[150] Colo. RPC 3.6(b).

Diamond's cases. The People focus on Respondent's many posts about AACC's refusal to allow Bandit out of his cage for an evaluation—including her posts vilifying Shipman and Youngblood—and her May 12 post in which she announced that AACC had been implicated in breaking down B.D.'s door and taking Diamond.[151] In particular, the People say, the Bandit posts address certain subjects called out in the comments as "more likely than not to have a material prejudicial effect on a proceeding," including: "the identity of a witness, or the expected testimony of a party or witness"; "the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test"; and "information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial."[152]

We first consider Bandit's case. Bandit's history and behavior, and whether he would be surrendered to AACC, were issues decided at his disposition hearing on January 13. When the court found that Bandit posed a danger to the community and could not be safely released, he was transferred to AACC. As Shipman clarified, the transfer left AACC with complete discretion as to Bandit's fate. Thus, by early March, at the time of Respondent's first posts, Bandit's disposition had long since been adjudicated.

Though Respondent sought an out-of-cage evaluation—and then publicly railed against AACC when she was denied that accommodation—she did so with an eye toward informally influencing the City's position, supplementing the record, and supporting her request to move Bandit to a different facility pending appeal. In other words, the evaluation had no direct bearing on Bandit's disposition, which had already been determined in an adjudicative setting.[153] The evaluation only mattered, as Respondent put it, "in getting the administrative [AACC's] decision reversed." Nor was an evaluation relevant to S.T.'s then-pending criminal charges, which, Respondent explained without contradiction, centered solely on whether Bandit bit or scratched the delivery person.[154] Taken in this light, we cannot find that Respondent's posts were substantially likely to have materially prejudiced any adjudicative proceeding in Bandit's matter or in S.T.'s criminal case.[155]

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[151] *See* Compl. ¶¶ 17, 20-21, 24, 27 & 62.

[152] Colo. RPC 3.6 cmt. 5(1), (3), & (5).

[153] It bears noting that Respondent's posts at issue were all made after the March 3 hearing in which Youngblood testified about Bandit's behavior and Shipman testified about methods of canine behavioral evaluations and the qualifications of evaluators.

[154] Some testimony was elicited suggesting that S.T. could have challenged his guilty plea on appeal; if reversed, those charges might, in theory, have been remanded for a criminal jury trial. But we adjudge the possibility of remand exceedingly remote, and, in any event, Respondent's posts about the evaluation process still would have had no relevance to S.T.'s remanded criminal proceeding.

[155] We also find that many of Respondent's posts are shielded from discipline by the safe harbor provisions of Colo. RPC 3.6(b), as they either reported the results of various litigated steps or repeated information contained in a public record, such as court records. *See In re Brizzi*, 962 N.E.2d 1240, 1247 (Ind. 2012) (defining "public records" in the context of Rule 3.6 as documents produced by or filed with the government to which the public has access).

In Diamond's case, Respondent worked to obtain Diamond's service dog license—an administrative, rather than adjudicative, process that paved the way for Diamond's stipulated release on conditions. Two days later, when Diamond was again found running loose, Respondent declared on her firm's page that AACC was implicated in breaking down B.D.'s door and taking Diamond.

This inaccurate post predated B.D.'s pretrial conference of May 19 and conceivably could have had a prejudicial effect on B.D.'s criminal proceeding. But we cannot find by clear and convincing evidence that it had a substantial likelihood of doing so. A few considerations drive our analysis. First, Respondent posted an update just three hours later correcting her earlier statement. Second, we received no evidence or testimony explaining how, in light of the correction, this post was substantially likely to affect an adjudicative proceeding in B.D.'s criminal matter. And third, when Diamond was again found running loose, the likelihood of any adjudicative proceeding plummeted: as Respondent intimated in her posts, because Diamond had again been found running at large—a violation of the stipulated conditions—she was subject to immediate surrender to and destruction by AACC. As a result, B.D. was unlikely to face any meaningful adjudicative proceeding, let alone a criminal jury trial, on the remaining charges of failure to license and dog running at large. For these reasons, the People have not proved Respondent violated Colo. RPC 3.6 in Diamond's matter.

Thus, based on the procedural stance of these two cases we cannot clearly and convincingly find that Respondent's posts had a substantial likelihood of materially prejudicing an adjudicative proceeding. We do wish, however, to recognize the fear and upset that Shipman and her family (and Youngblood, to a lesser extent) experienced as a result of Respondent's inflammatory posts on social media. Respondent's ad hominem attacks, which gave rise to other social media users' insults and threats of violence, cannot be condoned by a profession that seeks justice through reason. Though we do not find a violation here, we strongly disapprove of Respondent's conduct.

Colo. RPC 4.4(a)

Colo. RPC 4.4(a) forbids lawyers, in representing clients, from using means that have no substantial purpose other than to embarrass, delay, or burden a third person. The People allege that Respondent violated this rule in her March 21 post by recirculating a ten-year old allegation that City Attorney had engaged in an affair with a city client, and by broadcasting City Attorney's former name, current name, and current employment position. Respondent denies that the post was made with reference to any particular case or in representing a client, as Colo. RPC 4.4(a) requires. She also asserts that she has a constitutional First Amendment right to comment on governmental corruption.

The context of Respondent's post leads us to believe that Respondent's gratuitous aside about City Attorney had no substantial purpose other than to humiliate City Attorney. The timing of the post strikes us as relevant. In the week leading up to the post, Respondent tried, to no avail, to persuade City Attorney to soften her position as to Bandit's placement.

City Attorney refused to budge. On the day before the post, Respondent adjusted her litigation strategy; she felt forced, we think, to abandon the most promising avenue she had to save Bandit—a negotiated settlement with the City in S.T.'s criminal case. Success on appeal was unlikely, she knew, so her chances of saving Bandit had suddenly and significantly diminished. In this context, Respondent was motivated to lash out at the decision maker whom she believed was responsible for effectively sealing Bandit's fate.[156] Accordingly, we do not find credible Respondent's denial of a nexus between the post and Bandit's case, particularly given her tendency to use social media to berate people who upset her, as we have seen in other posts in this case.

The content of the post steers us toward the same conclusion. Respondent's remark about City Attorney was but a detour from the overall point of her post, which she termed a "happy update" about one of her old cases. The bulk of the update publicizes the conviction of a man formerly represented by City Attorney's ex-husband. But the post unfolds in such a way that suggests Respondent seized an opportunity to take a swipe at City Attorney through this tenuous connection. Respondent mentions the embarrassing yet stale allegation of the affair, but she does not refer to other purported aspects of the matter that might have pointed more directly to government corruption or a lack of professional ethics.[157] Further, Respondent made this post on her firm's page, not her SAVE page, which would have been a more likely home for posts aimed at exposing general malfeasance. And the remainder of Respondent's update has nothing to do with government corruption, a topic about which we saw no other posts by Respondent.

With these considerations in mind, we find that none of the March 21 post was aimed at exposing corruption or "nefarious" activities by allegedly unethical government employees. Respondent is not exempt from the operation of Colo. RPC 4.4(a) by the mere invocation, without evidence or support, of the First Amendment.[158] We also find that Respondent's targeted remark about City Attorney had no substantial purpose other than to embarrass City Attorney as retribution for her decisions in Bandit's case. Respondent thereby violated Colo. RPC 4.4(a).

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[156] That Respondent did not specifically mention Bandit in her post is immaterial here, as the circumstantial evidence convinces us that Respondent posted embarrassing information about City Attorney *because* of their recent interactions in Bandit's case. Indeed, to require an explicit reference or a "smoking gun" link between cruel or vicious behavior and a pending case would seem to gut the effect of the rule, which serves as a backstop against lawyers' basest impulses when advocating for their clients.

[157] City Attorney testified that when news of the putative scandal broke years before, the City investigated alleged misuse of city funds and personal activities conducted on the City's time. Respondent mentioned neither of these allegations in her post. Nor did she discuss the ethical implications of a lawyer engaging in a personal relationship with a client.

[158] *See In re Comfort*, 159 P.3d 1011, 1026 (Kan. 2007) (finding no record support for the respondent's argument that his letter qualified as political speech and stating that "[a] lawyer's right to free speech is tempered by his or her obligation to both the courts and the bar, an obligation ordinary citizens do not undertake"); *In re White*, 707 S.E. 2d 411, 415-16 (S.C. 2016) (rejecting a First Amendment defense, as it does not "prevent disciplinary action for an attorney's misconduct that is violative of the professional standards set by the courts," and observing that the respondent "could have zealously protected his client's rights by means other than using derogatory and demeaning comments").

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[159] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[160] 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 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 of loyalty and confidentiality to her clients by disclosing client information on social media without their authorization. By purporting to impinge on her clients' rights to terminate her representation, she likewise violated a duty to her clients. Finally, by publicly posting information meant to embarrass her opposing counsel, Respondent violated duties she owed to the legal profession.

Mental State: We determine that Respondent acted negligently when she entered into engagement agreements with her clients that purported to restrict their rights to terminate her representation. We find that she acted knowingly when she divulged confidential client information on social media. And we conclude that she knowingly posted embarrassing information about City Attorney on a very public social media platform.

Injury: The term of Respondent's engagement agreements purporting to restrict her clients' right to terminate the representation caused them potential injury but no actual harm. As to Respondent's improper social media disclosures, O.J. said that Respondent's posts made her feel ashamed, embarrassed, and insulted. Further, Swearingen testified that Respondent's posts containing disparaging remarks about O.J. and S.T. undermined their credibility and potentially prejudiced their case. Respondent's March 21 social media post embarrassed and humiliated City Attorney in front of her parents, children, bosses, subordinates, opposing counsel, and court staff. And, according to Swearingen, Respondent's March 21 post "poisoned the well" insofar as it hardened City Attorney's position and unfavorably disposed her toward Bandit's case. Though we do not adopt Swearingen's view that Respondent's post of March 21 actually caused O.J. or S.T. harm, we believe that her public disparagement of City Attorney certainly could have jeopardized her clients' interests.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

Three ABA *Standards* appear applicable in setting the presumptive sanction here. The presumptive sanction for Respondent's improper limitation on her clients' right to terminate is set by ABA *Standard* 4.14, which calls for admonition when a lawyer is negligent in dealing

[159] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).
[160] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

with client property but causes little or no actual or potential client injury. ABA *Standard* 4.22, which applies as to Respondent's disclosure of client information, states that suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client, thereby causing the client actual or potential injury. And ABA *Standard* 7.2 provides for suspension when a lawyer knowingly violates a professional duty and causes injury or potential injury to a client, the public, or the legal system. Taken together, the presumptive sanction for Respondent's three rule violations is suspension.

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations that justify an increase in the degree of the sanction to be imposed, while mitigating factors warrant a reduction in the severity of the sanction.[161] As explained below, the Hearing Board applies four factors in aggravation, all but one of which are given minimal weight, and two factors in mitigation, one of which also carries negligible weight. We evaluate the following factors proposed by the parties.

Aggravating Factors

Dishonest or Selfish Motive – 9.22(b): The People contend that Respondent acted selfishly by revealing confidential client information and by seeking to restrict her clients' right to terminate her representation. But Respondent argues that she should be given mitigating credit for an absence of a selfish or dishonest motive. We agree with the People that Respondent selfishly disclosed client information to mollify her donors and to secure additional funding. But we choose not to assign this factor much significance. We believe that Respondent felt justified in all that she did by a true conviction in her cause—a crusade to save animals and a campaign against what she saw as a callous city bureaucracy. Her behavior was petulant and retributive, but we find that her motivations, in the main, were not self-centered.

Pattern of Misconduct – 9.22(c): We consider Respondent's eight improper social media posts in two client matters as a budding pattern of misconduct, though we do not give this aggravator much weight, as the posts were all made around the same time frame.

Multiple Offenses – 9.22(d): Because Respondent violated three separate rules, we apply this aggravating factor. We give it only limited weight, however, because two of the rule violations are similar, both involving Respondent's poor judgment in the use of social media.

Vulnerability of Victim – 9.22(h): The People maintain that Bandit's family and Diamond's family were modest means or low-income clients who had limited ability to search for or hire other lawyers, and they note that O.J. and S.T. spoke limited English. We

[161] *See* ABA *Standards* 9.21 & 9.31.

decline to apply this aggravating factor. The evidence does not support a finding that these families lacked sophistication or the wherewithal to secure other counsel.

Substantial Experience in the Practice of Law – 9.22(i): Respondent's more than fifteen years of legal practice at the time of her misconduct warrants moderate weight in aggravation.

Mitigating Factors

Absence of Prior Discipline – 9.32(a): Respondent has no history of discipline, so we accord this factor some mitigating weight.

Cooperative Attitude Toward Proceedings – 9.32(e): While we commend Respondent's counsel for his professionalism and competence throughout this proceeding, we cannot point to anything Respondent has done that would merit application of this factor. (To the contrary, Respondent arrived an hour late on one day of the hearing, and she was late on two other days as well.)

Remorse – 9.32(l): Respondent asserts that she is entitled to mitigation for remorse. To us, she neither appeared remorseful nor volunteered any convincing expression of regret about her inappropriate posts. But we nevertheless give her very limited credit in mitigation because she testified that she has reconsidered her crowdfunding practices and has stopped actively posting on social media. Given that these activities have caused so much mischief, we wish to recognize Respondent's efforts to find other ways of conducting her practice.

Analysis Under ABA *Standards* and Case Law

The Colorado Supreme Court has directed the Hearing Board to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors.[162] We are mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[163] 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.[164]

We first examine case law relevant to Respondent's misconduct. A few Colorado cases and several extra-jurisdictional cases have addressed sanctions for comparable offenses, though no cases are on all fours. We begin with Respondent's knowing disclosure of client information in violation of Colo. RPC 1.6(a). In Colorado, a lawyer was suspended for

[162] *See In re Attorney F.*, 2012 CO 57, ¶ 19; *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).
[163] *In re Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[164] *Id.* ¶ 15.

six months, all served, for posting public, online responses to two negative client reviews on the internet.[165] The hearing board in that matter deemed the lawyer's lengthy disciplinary history to be a particularly weighty aggravator.[166] In other jurisdictions, lawyers who have revealed client information in violation of Rule 1.6(a) have faced sanctions ranging from public censure[167] to short suspensions.[168]

Lawyers who, in the course of representing a client, use tactics meant to embarrass, delay, or burden a third party have also been met with public censure or brief suspensions. In Colorado, a lawyer was suspended for one year and one day, with ninety days served, for carrying on an intimate relationship with a client and for conducting depositions of witnesses that served no substantial legal purpose other than to burden the deponents.[169] In sister jurisdictions, lawyers have received public censures[170] or short suspensions, if aggravating factors so warrant,[171] for similar infractions.

The People seek Respondent's suspension for six months; Respondent counters that she should be sanctioned, if at all, by private admonition. Our starting point, of course, is the presumptive sanction of suspension, which is reinforced by the ABA *Standards'* recommendation that in cases involving multiple types of lawyer misconduct the ultimate sanction should be at least consistent with, and generally greater than, the sanction for the

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[165] *People v. Issac*, No. 15PDJ099, 2016 WL 6124510, at *10 (Colo. O.P.DJ. Sept. 22, 2016).
[166] *Id.*
[167] *See In re Skinner*, 758 S.E.2d 788, 789-90 (Ga. 2014) (publicly censuring a lawyer for an isolated disclosure of client information and for a communication violation, taking into consideration one aggravating and seven mitigating factors); *In re Tsamis*, No. 2013PR00095, Ill. Att'y Registration & Disciplinary Comm'n (Jan. 15, 2014), http://www/iardc.org/rd_database/rulesdecisions.html (publicly censuring a lawyer for posting an adversarial response to a negative Avvo review, taking into consideration the stipulated applicability of four mitigating factors).
[168] *See In re Herron*, 441 P.3d 24, 40-41, 51 (Kan. 2019) (suspending a public defender for 60 days for dishonesty to a tribunal, disclosing client information, and prejudicing the administration of justice); *In re Harding*, 223 P.3d 303, 310-11 (Kan. 2010) (suspending a city attorney for 90 days for disclosing confidential information, some of which was later published in a local newspaper, and for failing for represent his client's interests); *In re Peshek*, 798 N.W.2d 879, 881 (Wis. 2011) (suspending, on reciprocal discipline, a lawyer for 60 days for publishing a public blog containing confidential information about her clients and for failing to inform a court of a client's misstatement of fact).
[169] *People v. Beecher*, 224 P.3d 442, 450 (Colo. O.P.D.J. 2009).
[170] *See In re Hurley*, 183 A.3d 703, *4 (Del. 2018) (publicly censuring a lawyer who made antagonistic, inflammatory, and demeaning remarks to and about a former client in three separate letters sent to disciplinary authorities and his former client, and for making disparaging or demeaning remarks to and about four different deputy attorneys general in correspondence); *In re Comfort*, 159 P.3d at 1028 (publicly censuring a lawyer who published to various municipal employees and officials an indignant letter he wrote to another lawyer).
[171] *See In re Warrick*, 44 P.3d 1141, 1148 (Id. 2002) (suspending a prosecutor for thirty days for writing "waste of sperm" and "scumbag" on a jail's inmate control board next to a criminal defendant's name, and for failing to take reasonable remedial measures to correct a prosecution witness's false testimony); *In re White*, 707 S.E. 2d at 415-16 (suspending a lawyer for ninety days for sending to a client's landlords and to town officials a letter intended to intimidate and insult his opponents; the sanctions analysis took into account the lawyer's extensive disciplinary history).

most serious disciplinary violation.[172] That baseline presumptive sanction does not meaningfully shift when we consider that the four lightly weighted factors in aggravation outnumber the two lightly weighted applicable mitigators. Nor does the guiding case law much alter the calculus.

The presumptive sanction of suspension, combined with the preponderance of aggravators and the corresponding case law, convinces us that we should impose a six-month suspension here. But we also believe that the suspension should be wholly stayed, contingent on Respondent's successful completion of conditions during a two-year probationary period. Save for her ethical lapses, we were impressed by the quality of Respondent's advocacy in the underlying cases and believe that she is a competent, diligent, hardworking lawyer who strives to achieve justice for her clients. Though she deployed social media in her law practice in dishonorable and misguided ways, we conclude that with appropriate guardrails she is unlikely to harm the public or to cast additional disrepute on the profession while serving as a lawyer. Accordingly, during her probationary period, Respondent must fulfill conditions that include attending ethics school; meeting monthly with a practice monitor; obtaining the approval of her mentor before crowdfunding or posting to social media about any of her prospective, current, or former cases or clients; and sending a letter of apology to City Attorney. We impose these conditions to protect the public and the profession in the hopes Respondent will learn that in the practice of law the ends, however good, cannot justify unethical means.

IV. CONCLUSION

Lawyers are no less bound by the Rules of Professional Conduct when using social media platforms than they are while engaging in personal interactions. In the cases underlying this disciplinary matter, Respondent overstepped those ethical bounds when she posted to social media, abandoning her duties to her clients and to the profession. But because we believe Respondent can serve as an effective lawyer with the proper guidance and restrictions, we impose probationary conditions on a fully stayed suspension of six months.

[172] ABA *Standards* Preface at xx.

V. ORDER

The Hearing Board therefore **ORDERS**:

1. **JULIET RENE PICCONE**, attorney registration number **30934**, will be **SUSPENDED** from the practice of law for **SIX MONTHS**, **ALL STAYED** upon the successful completion of a **TWO-YEAR** period of probation, subject to the conditions identified in paragraph 2 below. The probation will take effect upon issuance of an "Order and Notice of Probation."[173]

2. Respondent **SHALL** successfully complete a **TWO-YEAR PERIOD OF PROBATION** subject to the following conditions:

    a. She will commit no further violations of the Colorado Rules of Professional Conduct;

    b. She will attend at her own expense the ethics school offered by the People, not later than six months after her probation begins;

    c. During the period of her probation, Respondent shall consult monthly with a practice mentor selected by the People in conjunction with Respondent. Respondent and the People shall select the mentor **no later than the effective date of the probation**. Also by that date, Respondent shall provide a copy of this opinion to the mentor and execute an authorization for release, requiring the mentor to notify the People if Respondent fails to fully participate in the required mentoring. The mentor shall submit monthly reports to the People and to the PDJ during the period of probation. Respondent shall bear all costs of complying with this condition of probation.

        (i) The mentoring shall be designed to minimize the possibility that Respondent's misconduct will reoccur, and to implement and consistently employ practices that promote professionalism within her law practice. To that end, during her period of probation Respondent must obtain the approval of the mentor before crowdfunding on behalf of any of her prospective, current, or former clients.[174] Similarly, during her period of probation Respondent must obtain the approval of the mentor before making a social media post about any of her prospective, current, or former cases or clients.

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

[174] *See* Colo. RPC 1.18 cmt. 2 (defining prospective clients).

(ii) Respondent must send a letter of apology to City Attorney acknowledging the harm that she caused her. The letter must be approved by Respondent's mentor and sent **no later than one year after the effective date of the probation**. A confidential copy must also be sent to the People. Respondent is encouraged, though not ordered, to send similar letters of apology to Shipman and Youngblood.

3. If, during the period of probation, the People receive information that any condition may have been violated, the People may file a motion with the PDJ specifying the alleged violation and seeking an order that requires Respondent to show cause why the stay should not be lifted and the sanction activated for violation of the condition. The filing of such a motion will toll any period of suspension and probation until final action. Any hearing will be held under C.R.C.P. 251.7(e).

4. No more than twenty-eight days and no less than fourteen days before the expiration of the period of probation, Respondent **MUST** file an affidavit with the People stating that she has complied with all terms of probation and shall file with the PDJ notice and a copy of such affidavit and application for an order showing successful completion of the period of probation. On receipt of this notice and absent objection from the People, the PDJ will issue an order showing that the probation was successfully completed.

5. The parties **MUST** file any posthearing motion **on or before Monday, January 27, 2020**. Any response thereto **MUST** be filed within seven days.

6. The parties **MUST** file any application for stay pending appeal **on or Monday, February 3, 2020**. Any response thereto **MUST** be filed within seven days.

7. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** submit a statement of costs **on or before Monday, January 27, 2020**. Any response thereto **MUST** be filed within seven days.

DATED THIS 13th DAY OF JANUARY, 2020.

[original signature on file]

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

[original signature on file]

DEAN S. NEUWIRTH
HEARING BOARD MEMBER

[original signature on file]

BOSTON H. STANTON JR.
HEARING BOARD MEMBER

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