People v. Preston. 10PDJ021. November 12, 2010. Attorney Regulation. The Hearing Board publicly censured James E. Preston (Attorney Registration Number 20578). Respondent flouted the Twenty-Second Judicial District's Administrative Order 94-03 by repeatedly faxing non-emergency pleadings for filing and by refusing to pay the fees associated with the court's receipt and handling of those faxed pleadings. Respondent's pattern of ignoring the court's mandates and billing invoices, rather than pursuing available avenues to challenge or otherwise seek relief from the court's orders, flagrantly contravened professional norms and constitutes conduct prejudicial to the administration of justice in violation of Colo. RPC 8.4(d).

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** JAMES E. PRESTON	Case Number: **10PDJ021**

DECISION AND ORDER IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.19(b)

On October 12, 2010, a Hearing Board composed of Cynthia F. Covell and Henry C. Frey, members of the Bar, and William R. Lucero, the Presiding Disciplinary Judge ("PDJ"), held a one-day hearing pursuant to C.R.C.P. 251.18. Elizabeth E. Krupa appeared on behalf of the Office of Attorney Regulation Counsel ("the People"), and James E. Preston ("Respondent") appeared pro se. The Hearing Board now issues the following "Decision and Order Imposing Sanctions Pursuant to C.R.C.P. 251.19(b)."

I. ISSUE AND SUMMARY

The People allege Respondent violated Colo. RPC 8.4(d) by disobeying the Twenty-Second Judicial District's Administrative Order 94-03 ("Administrative Order"). Specifically, the People contend Respondent flouted the Administrative Order by repeatedly faxing non-emergency pleadings for filing and by refusing to pay the fees associated with the court's receipt and handling of the faxed pleadings. The Hearing Board agrees. Respondent's pattern of ignoring the court's mandates and billing invoices, rather than pursuing available avenues to challenge or otherwise seek relief from the court's orders, flagrantly contravenes professional norms and constitutes conduct prejudicial to the administration of justice. The Hearing Board concludes Respondent violated Colo. RPC 8.4(d) and finds public censure is warranted in this instance.

II. PROCEDURAL HISTORY

On February 23, 2010, the People filed a complaint, and Respondent filed an answer on March 17, 2010. Respondent filed a "Motion to Dismiss" on

July 5, 2010. The People filed a response opposing the motion on July 20, 2010, and Respondent filed a reply brief on August 12, 2010. The Court denied the motion on August 26, 2010, because the case was not susceptible to determination on the basis of pleadings or motions. On August 13, 2010, the People filed "Complainant's Motion for Summary Judgment," to which Respondent responded on September 10, 2010. On September 20, 2010, the Court denied the People's motion on the grounds that the matter was inherently fact-specific and thus could not be determined without a full hearing. At the hearing conducted on October 12, 2010, the Hearing Board heard testimony and the PDJ admitted the People's exhibits 1-14 and 17 and Respondent's exhibits A and G. Both parties were also invited to file supplemental closing arguments; the People filed a brief on October 20, 2010,[1] and Respondent filed one on October 28, 2010.

III. FINDINGS OF FACT AND RULE VIOLATIONS

The Hearing Board finds the following facts and rule violations have been established by clear and convincing evidence.

Jurisdiction

Respondent took the oath of admission and was admitted to the Bar of the Colorado Supreme Court on June 20, 1991. He is registered upon the official records, Attorney Registration No. 20578, and is thus subject to the jurisdiction of the Hearing Board in these disciplinary proceedings.[2] Respondent's registered business address is P.O. Box 120, Lewis, Colorado 81327-0120.

Administrative Order 94-03

Respondent, a longstanding practitioner in the southwest corner of Colorado, regularly appears in the Twenty-Second Judicial District, which encompasses both Montezuma and Dolores Counties. Respondent is one of approximately only twenty attorneys who live and conduct business in the Twenty-Second Judicial District.

On February 1, 1994, the Twenty-Second Judicial District promulgated the Administrative Order regarding facsimile filings, which was later reissued by the Honorable Chief Judge Sharon Hansen ("Judge Hansen") on November 2, 1998. Judge Hansen testified[3] that she reissued the Administrative Order, adding language regarding fees, to remedy the fact that "people weren't paying for a service [facsimile filing] the court was providing." The reenacted version of the Administrative Order was never sent to the Colorado Supreme Court for

[1] Included in the brief was People's exhibit 15.
[2] *See* C.R.C.P. 251.1(b).
[3] Judge Hansen testified at the hearing by telephone.

approval; Judge Hansen said she saw no cause to do so because it "didn't seem to be any different from what the Colorado Supreme Court had already said, that you can charge for faxes." Nor was the reenacted version circulated amongst the bar members of the Twenty-Second Judicial District for comment. Instead, once effective, the reissued version was distributed to attorneys who work in the Twenty-Second Judicial District via courthouse mailboxes or, if the attorney so requested, via regular U.S. mail.

As reenacted, the Administrative Order provides that "FACSIMILE TRANMISSIONS SHOULD BE USED ON EMERGENCY BASIS ONLY – NOT AS STANDARD OR ROUTINE WAY OF SUBMITTING DOCUMENTS TO THE COURTS."[4] It also states that attorneys who wish to transmit pleadings are required to pay standard fees of $1.00 per case for each facsimile transmission plus $1.00 per page.[5]

On July 24, 2008, Respondent faxed duplicate motions to the Twenty-Second Judicial District in case 08CR69.[6] Although Respondent had not sought prior approval from the court to file by facsimile, those motions were accepted by the Court, and Respondent was charged a total of $9.00 in fees.[7] Notwithstanding the court's acceptance of these filings, District Court Administrator Eric Hogue ("Hogue") penned a letter to Respondent on August 6, 2008, to remind Respondent of the court's policy:

> It has been brought to my attention that you have recently faxed numerous motions to the court. While the court does accept fax pleadings, at a cost of $1.00 per page, the service is a courtesy and reserved for emergency situations and requires advance approval by the court. In the future, the 22nd Judicial District will not accept fax pleadings from your office that are not in compliance with the policy stated above.[8]

Notwithstanding Hogue's admonition, Respondent faxed a two-page document to the court less than three weeks later in case 08PR72. Desiree Lipe ("Lipe"), the clerk of court, sent Respondent a return facsimile the same day to notify him the document was rejected because the court had not pre-approved his facsimile filing.[9] Lipe also marked the facsimile transmission

[4] People's exhibit 1.
[5] *Id.*
[6] People's exhibits 3 and 4.
[7] People's exhibit 4.
[8] People's exhibit 2.
[9] People's exhibit 5. In their hearing brief and at the hearing itself, the People repeatedly read into the Administrative Order a requirement that attorneys obtain advance approval from the court in order to submit facsimile filings. While this may well have been Hogue's or Lipe's interpretation of the policy (*see* People's exhibits 2 and 9), the Hearing Board can locate no such requirement in the plain language of the Administrative Order.

sheet with the charges levied for Respondent's attempted facsimile filing.[10] Lipe testified, "I always felt it was important for an attorney to understand why a pleading was being rejected," and that it was "a courtesy for [attorneys] to know they owe the court money for the fax."

Respondent faxed another filing in case 08PR72 a week later, on September 8, 2008, without advance permission. Again, the court rejected the filing with the note, "This is an E filed case; there is no proposed order w/ motion; Permission to fax not requested or granted."[11] The court clerk recorded on the facsimile transmission sheet the amount Respondent owed, including late charges for failure to timely pay the court's facsimile filing fees.

Less than a month later, on October 2, 2008, Respondent attempted to file by facsimile a twenty-one-page motion in case 07CV143 after his efforts to e-file the same document were rejected. Respondent received the court's standard return facsimile alerting him to the filing's rejection with the note, "This is an e-filed case – this was rejected on LexisNexis because of no order."[12] As with earlier facsimile transmissions Respondent received from the court, the court clerk listed facsimile charges and late fees on this page.[13] Just a few months later, on February 17, 2009, Respondent again faxed a lengthy motion in case 08CV88. This, too, was rejected; the court clerk cursorily explained in a return facsimile, "Administrative Order 94-03. Not emergency pleadings – Advance approval required."[14] Charges were again assessed.[15]

That same day, on February 17, 2009, Lipe drafted a letter to Respondent detailing the seven facsimile filings he had attempted over the course of seven months, the disposition of each filing, and the charges associated with each. Lipe also enclosed a copy of the Administrative Order and Hogue's August 6, 2008, letter, and she summarized the court's policy regarding facsimile filings.[16] Respondent did not reply to Lipe. Shortly thereafter, though, Respondent again sought to file by facsimile a pleading in case 08CV88 without prior approval. Lipe rejected his pleading on March 3, 2009, because Respondent had not requested permission in advance for an emergency filing.[17] She imposed additional charges for that filing and logged them on her return facsimile.[18]

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[10] *Id.*
[11] People's exhibit 6.
[12] People's exhibit 7.
[13] *Id.*
[14] People's exhibit 8.
[15] *Id.*
[16] People's exhibit 9.
[17] People's exhibit 10-A.
[18] *Id.*

Apparently frustrated by Respondent's continued disregard of the court's policy and its assessed fees, Lipe then forwarded her February 17, 2009, correspondence, with updates and additional explanation, to the Office of Attorney Regulation Counsel.[19] In response, the Office of Attorney Regulation Counsel sent Respondent an investigatory letter on March 17, 2009, requesting Respondent's position in the matter.[20] Respondent replied on April 5, 2009.[21] Nevertheless, on April 7, 2009, Respondent once more faxed a pleading to the court in case 08CV50 in contravention of the Administrative Order. The filing was rejected and fees were assessed.[22] To date, Respondent has not paid any of the $132.00 in fees associated with the pleadings he faxed to the court.[23]

The People contend that Respondent's continued submission of pleadings by facsimile—despite repeated notices that such pleadings would be rejected—coupled with his refusal to pay the facsimile filing fees associated with his improper facsimile transmissions, constitutes conduct prejudicial to the administration of justice in violation of Colo. RPC 8.4(d).

Respondent disagrees on a variety of grounds. First, as a factual matter, Respondent contends that he *did* adhere to the Administrative Order insofar as each faxed pleading was filed on an emergency basis only after being arbitrarily rejected by the Twenty-Second Judicial District's LexisNexis e-filing system. Second, he argues the Administrative Order is preempted by C.R.C.P. 121 Practice Standard § 1-25, which mandates acceptance of facsimile copies. Third, Respondent maintains he is exonerated from any failure to comply with the Administrative Order under comment 4 to Colo. RPC 8.4(d) because he possessed a good faith belief that no valid obligation existed to so comply. And finally, Respondent contests the applicability of Colo. RPC 8.4(d) in this matter; he insists that a Colo. RPC 8.4(d) claim cannot stand alone, and that such a charge is only proper when conduct *seriously* interferes with the administration of justice. We consider each argument in turn.

At the hearing, Respondent devoted much time to showing that he sought recourse to facsimile filing only when the Twenty-Second Judicial District clerks rejected his emergency e-filed pleadings for trifling reasons. Depicting the e-filing system as Byzantine—and bordering on the Kafkaesque—Respondent contends that Lipe and deputy court clerks denied each of his

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[19] People's exhibit 11-A.
[20] People's exhibit 12.
[21] People's exhibit 14. Neither the People nor Respondent submitted as an exhibit Respondent's reply to the People's request for information.
[22] People's exhibit 13.
[23] Although not dispositive of the findings we make herein, the Hearing Board notes the testimony in this case is undisputed that as long as the Administrative Order has been in effect, no other lawyer practicing in the Twenty-Second Judicial District has refused to abide by it.

seven rejected pleadings based on purely inconsequential objections.[24] Since judges receive no notice of rejected e-filings, Respondent testified, he faxed those same pleadings to preserve a record, via facsimile transmission time banner, of his attempted filing.

While the evidence presented at the hearing was too sparse to allow us to unravel the intricacies of the LexisNexis e-filing system or determine if Respondent's various criticisms of that system have any merit, we do have evidence sufficient to conclude that Respondent did not comply with the strictures of the Administrative Order.

The Administrative Order specifically mandates that attorneys fax filings only in emergencies, and that any facsimile transmission should be accompanied by a cover sheet with instructions for court personnel. But Respondent admitted he never transmitted facsimiles with any instruction to the court clerks that they should consider his facsimiles to have been filed on an emergency basis. Nor did he otherwise indicate on facsimile cover sheets that he was transmitting the filings in an attempt to adhere to imminent court-imposed deadlines. And Respondent conceded that rather than e-file a corrected version of a rejected e-filing, he would attempt to "correct by fax the same problems if [he] could identify what they were." In any case, even if Respondent legitimately faced emergencies necessitating facsimile filing, his failure to pay the assessed fees and costs cannot be excused by the court's rejections—be they valid or invalid—of his earlier e-filing attempts. Simply put, Respondent did not comply with the Administrative Order.

Respondent next argues that he did not have to comply with the Administrative Order because it is preempted by C.R.C.P. 121, which sets forth "Practice Standards" addressing rule subject areas. These Practice Standards "are declared to be of statewide concern and shall preempt and control in their form and content over any differing local rule." Specifically, Respondent points

[24] At the hearing, Respondent inveighed against the clerks' rejection of his pleadings as based on nothing more than their whims to see his "word processing done differently." Specifically, Respondent criticized the court clerks' rejection of a motion when a proposed order was not "linked" to the motion in the e-filing system; the rejection of a proposed order with "/s/" in the signature block; and rejection of a motion when a linked proposed order contained Respondent's name or address. However, the Twenty-Second Judicial District's Administrative Order 2007-005 (Respondent's exhibit G), expressly proscribes many of the same practices. In addition, Respondent's exhibit A calls into question Respondent's portrayal of Lipe and her deputy clerks as capricious; it reveals that the rejections of Respondent's e-filings in Montezuma County were always accompanied by explanations for the rejection, thereby enabling Respondent to correct such problems. Further, Respondent's pleadings were not just rejected by the Twenty-Second Judicial District: his e-filings were also rejected in Boulder County, the Colorado Court of Appeals, El Paso County, and Weld County. *See also* People's exhibit 15. While we acknowledge smaller jurisdictions—and the attorneys practicing within them—may experience some growing pains in adopting new technology, including the e-filing system, all attorneys are responsible for acquainting themselves with those technologies and approaching court personnel with any concerns or problems that arise.

to C.R.C.P. 121 Practice Standard § 1-25, which governs acceptance of facsimile copies, as inconsistent with the Administrative Order. Paragraph 2 of Practice Standard § 1-25 provides that "[f]acsimile copies which conform with the quality requirements specified in C.R.C.P. 10(d)(1) may be filed with the court in lieu of the original document. Once filed with the court, the facsimile copy shall be treated as an original for all court purposes." The committee comment to Practice Standard § 1-25 clarifies that "reasonable fees can be charged for the costs associated with facsimile filings. However, the setting of such fees is not within the scope of the Rules of Civil Procedure."

Respondent's preemption argument is not dispositive of this case. To begin with, the fee provisions of the Administrative Order are not preempted, because the comment to Practice Standard § 1-25 specifically reserves to courts the authority to set facsimile fees. What is more, Chief Justice Directive 06-01 expressly allows courts to charge a $1.00 per page fee for both incoming and outgoing facsimiles, unless the facsimile is requested by the court. At a minimum, then, the Twenty-Second Judicial District's policy concerning facsimile charges is not preempted, and Respondent's failure to recompense the court for those fees cannot be excused based upon the doctrine of preemption.

The Hearing Board declines to further consider the question of preemption, since we need not decide the matter in order to determine whether Respondent violated Colo. RPC 8.4(d). Regardless of whether Practice Standard § 1-25 preempts operation of the remainder of the Administrative Order, we determine that Respondent's failure to follow the Administrative Order prejudiced the administration of justice. This is because "[t]he orderly and expeditious administration of justice by the courts requires that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings."[25] An orderly and proper proceeding here would have been a formal or informal challenge to the Administrative Order on the grounds of preemption, not just a failure to comply.[26] Accordingly, since Colo. RPC 8.4(d) is broader and

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[25] *Maness v. Meyers*, 419 U.S. 449, 459 (1975) (internal citations and quotes omitted). *See also Howat v. Kansas,* 258 U.S. 181, 190 (1922) ("It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished."); *Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Hughes*, 557 N.W.2d 890, 894 (Iowa 1996) (noting that ignoring a court order, regardless of the correctness of that order, is "simply not an appropriate step to test the validity of the order under our Code of Professional Responsibility"); *Balter v. Regan*, 468 N.E.2d 688, 689 (N.Y. 1984) (ruling that "[h]owever misguided and erroneous the court's order may have been, petitioner was not free to disregard it and decide for himself the manner in which to proceed").

[26] Respondent asserted at the hearing that a formal challenge to the Administrative Order was too costly. However, he presented no evidence that he had made an informal challenge by

encompasses considerations other than the narrow question of preemption, the Hearing Board declines to summarily decide this case on that basis alone.

We also reject Respondent's assertion that he was entitled to "refuse to comply with [the Administrative Order] upon a good faith belief that no valid obligation exists."[27] There is no evidence, save Respondent's testimony, to support this contention. Respondent's alleged good faith belief could reasonably have been evidenced by his willingness to adhere to those obligations he acknowledged as valid. But while Respondent conceded that at least the $9.00 facsimile filing fee was validly assessed in case 08CR69—in which his pleadings were accepted and filed—he never paid or sought a waiver of even that fee. Respondent's failure to voluntarily pay *any* portion of his debt, including those fees he recognizes as valid, discredits his claim of good faith.[28] Respondent asserted, in part, that he should not have to pay most of the facsimile filing fees charged because many of his clients were indigent. However, we received no evidence showing that a court had issued an order in any of the relevant cases permitting Respondent's client to proceed *in forma pauperis*. In the absence of such an order, a claim of indigency alone is insufficient to relieve the Respondent from payment of facsimile filing fees or any other court cost.

In addition, Respondent could have demonstrated a good faith belief by making a record of such a belief, for example, by asserting and supporting, in either a pleading or another communication to the court, his position that the Administrative Order was invalid, or that he was exempt from some or all of its requirements.[29] Yet Respondent never openly challenged the Administrative Order in a court proceeding, nor did he broach the subject informally with Lipe, Hogue, or any other court personnel.[30] Respondent's pattern of ignoring

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simply writing to the clerk or Judge Hansen to voice his position about preemption of the Administrative Order.

[27] Colo. RPC 8.4(d), cmt. 4.

[28] *In re Stanbury*, 561 N.W.2d 507 (Minn. 1997), is instructive on this point. There, respondent Stanbury was charged with engaging in conduct prejudicial to the administration of justice by failing to pay a judgment against him. *Id.* at 508-09. Stanbury argued he possessed a good faith belief that part of the judgment was invalid because he had been overcharged. *Id.* at 510. The Minnesota Supreme Court rejected this argument, observing that by admitting a portion of the judgment was valid, Stanbury conceded he had no good faith belief to justify his nonpayment of that portion of the debt. *Id.* at 510-11. "Stanbury fail[ed] to meet his own standard for exemption from discipline," and the court found this conduct alone was sufficient to violate Rule 8.4(d). *Id.*

[29] *See* Colo. RPC 3.4(c) (interdicting knowing disobedience of an obligation under the rules of a tribunal "except for an open refusal based on an assertion that no valid obligation exists"). *See also In re Pokorny*, 453 N.W.2d 345, 347 (Minn. 1990) (suggesting that failure to appeal or otherwise challenge a judgment reflects lack of a good faith belief that no obligation existed to comply with that judgment).

[30] Respondent provided contradictory testimony on this point; early in the hearing he insisted he had talked to several deputy district clerks about the issue, but he later reversed course and complained he could never get a live person in the clerks' office on the phone. Respondent also

repeated court notifications and invoices without filing a motion with the court or contacting the clerk defeats his good faith defense. We thus find Respondent failed to obey the Administrative Order not because he had a good faith belief that no valid obligation existed, but rather because he chose not to comply with it.

Finally, the Hearing Board turns to Respondent's contention that Colo. RPC 8.4(d) cannot, by itself, support disciplinary charges because the language of the Rule is "too vague and ambiguous to support ethical charges by itself." Although we acknowledge that "conduct prejudicial to the administration of justice" is arguably imprecise, we find that a claim under Colo. RPC 8.4(d) is an appropriate vehicle for disciplinary action and may be properly employed, standing on its own, in some instances.

In reaching this position, we are guided by the decisions in sister jurisdictions Respondent cites in his hearing brief. These jurisdictions have held that analogs to Colo. RPC 8.4(d) may serve as the sole basis for discipline, but only in situations involving conduct whose "seriousness is beyond question," and "so egregious" and "flagrantly violative of accepted professional norms" as to "undermine the legitimacy of the judicial process."[31] Thus, we are called upon to determine whether Respondent's flagrant refusal to pay validly-assessed facsimile charges, coupled with his failure to adhere to the court's emergency facsimile filing policy, suffices to violate Colo. RPC 8.4(d).

The Hearing Board finds several Colorado Supreme Court cases helpful in this task. In *In re Bauder*,[32] an attorney was deemed to have engaged in conduct prejudicial to the administration of justice by knowingly refusing to pay costs assessed in an earlier disciplinary proceeding. Likewise, in *People v. Whitaker*,[33] the Colorado Supreme Court concluded an attorney's failure to pay a court reporter's fees amounted to conduct prejudicial to the administration of justice, which it deemed "especially relevant to disciplinary sanctions because the debt arose out of the respondent's legal practice." We also take note of *People v. Huntzinger*,[34] where an attorney's failure to pay court-ordered attorney's fees was deemed sanctionable.[35]

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attempted to place the onus of communication on court staff, protesting that the court clerks failed to initiate a telephonic discussion with him. We ultimately conclude, weighing Respondent's credibility and based on all the testimony before us, that Respondent simply declined to openly dispute the Administrative Order.

[31] *See In re Discipline of Attorney*, 815 N.E.2d 1072, 1077, 1079 (Mass. 2004) (quoting in part *In re Discipline of Two Attorneys*, 660 N.E.2d 1093, 1099 (Mass. 1996)).

[32] 980 P.2d 507, 508 (Colo. 1999).

[33] 814 P.2d 812, 814-15 (Colo. 1991).

[34] 967 P.2d 160, 161-62 (Colo. 1998) (upholding hearing board's finding that failure to comply with court's order violated Colo. RPC 3.4(c), which prohibits knowing disobedience of a court order).

[35] We also consider with interest a cluster of Minnesota Supreme Court decisions sanctioning attorneys for failure to timely pay fees associated with their legal practices. These cases agree

Taken together, these cases hold that a failure to pay debts related to the lawyer's practice of law prejudices the administration of justice, and they support a finding that Respondent's obdurate refusal to follow announced court procedures and fee policies violated Colo. RPC 8.4(d). Practically speaking, by repeatedly resorting to facsimile filing following rejection of his e-filings, Respondent forced court administrative staff to unnecessarily expend time in processing his requests. In addition, Respondent's refusal to honor court policy prejudiced the administration of justice by evincing a lack of "respect due to courts and judicial officers."[36] Over the course of nine months, Respondent received at least three personal letters from court staff and the Office of Attorney Regulation Counsel informing him of the Administrative Order's requirements, yet he faxed no fewer than six pleadings in defiance of those instructions during that time. He also ignored each and every court invoice detailing accrued facsimile charges, demonstrating an "indifference to his financial obligations arising out of the practice of law."[37] This is not an issue merely about debt collection, as Respondent alleges,[38] but rather one concerning Respondent's continued snub of court policy, which undermines the legitimacy of the judicial process.[39]

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that an attorney's "adamant stance against voluntary payment of valid debts, especially when such obligations were for goods and services used in [the attorney's] law practice, reflects adversely on [the attorney's] commitment to the rights of others, thereby reflecting adversely on his fitness for the practice of law." *In re Pokorny*, 453 N.W.2d at 348 (internal quotations and citations omitted). *See also In re Stanbury*, 561 N.W.2d at 510-11 (sanctioning attorney for refusal to pay law library charges and court filing fee); *In re Haugen,* 543 N.W.2d 372, 375 (Minn. 1996) (sanctioning attorney for failure to timely pay court reporter fees); *In re Hartke*, 529 N.W.2d 678, 683 (Minn. 1995) (sanctioning attorney for failure to promptly satisfy a fee arbitration award); *In re Ruffenach*, 486 N.W.2d 387, 390 (Minn. 1992) (sanctioning attorney for failure to voluntarily pay legal malpractice judgment).

[36] *People v. Dalton*, 840 P.2d 351, 352 (Colo. 1992) (quoting *Losavio v. Dist. Court*, 512 P.2d 266, 268 (Colo. 1973)).

[37] *In re Pokorny,* 453 N.W.2d at 348.

[38] Respondent frames this matter as a "simple dispute over a [sic] charges the Complainant improperly alleges," and he suggests the Hearing Board's jurisdiction does not stretch to encompass "adjudication of small claims billing disputes between a private party, and the state." We agree with Respondent that this forum is not designed, as he puts it, for "litigating billing disputes on behalf of the State," but we disagree that a billing dispute is the essence of this matter. Rather, this case addresses Respondent's intractable approach to the Administrative Order. For this reason, we decline to consider Respondent's contention that he is entitled to a monetary offset for the 211 pages of correspondence and invoices the clerks sent to Respondent without his permission, at a charge of $1.00 per page and $5.00 per use of Respondent's toll-free facsimile number. We observe in passing, however, that Respondent's argument appears to lack force in light of Chief Justice Directive 06-01, which allows courts to charge a $1.00 per page fee for outgoing facsimiles, and the Administrative Order, which alerts attorneys that the clerk's office will transmit a bill to the filing attorney via facsimile after the attorney's faxed pleadings are received.

[39] *See In re Stanbury*, 561 N.W.2d at 511 ("Even if refusing to pay law-related debts to private parties lies near the edge of Rule 8.4(d)'s reach, refusing to make good on court filing fees—payments which provide direct financial support for our judicial system—falls within the core definition of conduct prejudicial to the administration of justice."). *See also Statewide Grievance Comm. v. Whitney*, No. CV-92-0511142-S, 1992 WL 204694, at *2 (Conn. Super.

We are cognizant that Colo. RPC 8.4(d) is a broadly-worded rule, and we must be careful, as Respondent cautions, that it not be invoked against "[a]ny attorney who asserts any right with the State." Accordingly, we emphasize that we find the conduct at issue here serious beyond question, regardless of the monetary amount at stake, because it flies in the face of professional norms: rather than addressing the court's Administrative Order through appropriate legal channels, as a reasonable lawyer would, Respondent instead simply defied the court's mandates. We find that by intentionally ignoring the Administrative Order, without any step to challenge its legitimacy, Respondent's conduct prejudiced the administration of justice in violation of Colo. RPC 8.4(d).

IV. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) ("ABA *Standards*") and Colorado Supreme Court case law govern the selection and imposition of sanctions for lawyer misconduct. ABA *Standard* 3.0 mandates that, in selecting the appropriate sanction, the Hearing Board must consider the duty breached, Respondent's mental state, the injury or potential injury caused, and the aggravating and mitigating evidence.

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

Duty: By disregarding his obligation to obey the rules of the tribunal, Respondent violated his duties to the legal system. The public expects lawyers to respect legal rules of substance and procedure and to abide by normal methods of contesting the validity of court rulings. Yet Respondent declined to operate within the bounds of the law—without documenting his refusal to comply in a letter, a pleading, or an appeal—thereby breaching his duties as an officer of the court.

Mental State: The Hearing Board has no choice but to find Respondent acted knowingly in flouting the court's facsimile policy. Court personnel, as well as the Office of Attorney Regulation Counsel, warned Respondent in writing on multiple occasions that he was in violation of the Administrative Order and in arrears for assessed facsimile filing charges. Nevertheless, Respondent continued to fax pleadings without remitting payment to the court. We conclude Respondent possessed a "conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result."[40]

Aug. 19, 1992) (finding attorney's repeated refusals to obey orders of the court violated Rule 8.4(d), and noting that "[i]f attorneys were free to obey or not obey such orders, as their own notions might dictate, there would be no administration of justice, but only chaos.").

[40] ABA *Standard* IV, "Definitions."

Injury: We conclude Respondent caused actual, albeit minimal, financial harm to the court's administrative processes. Respondent's faxed pleadings added to the staff's workload and wasted judicial resources: each time Respondent faxed a pleading, court personnel were required to determine what matter the facsimile concerned, discuss the reason for the facsimile and whether permission for faxing had been granted, ascertain whether the facsimile had previously been e-filed, compare it to any rejected e-filings Respondent had submitted, prepare and send a facsimile invoice, and follow up to collect facsimile filing payments. The injury Respondent's conduct caused to the authority of the court, and by extension the integrity of the legal system, cannot be measured in dollars, but is injury nonetheless. Respondent also caused potential harm to his clients, since his behavior jeopardized the acceptance of every client pleading he faxed.

ABA Standard 3.0 – Aggravating and Mitigating Factors

Aggravating circumstances are any factors that may justify an increase in the degree of discipline to be imposed, and mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline imposed. The Hearing Board considers evidence of the following aggravating and mitigating circumstances in deciding the appropriate sanction.

Aggravating Factors

Pattern of Misconduct – 9.22(c): Respondent's failure to obey the Administrative Order was not an isolated incident: he regularly faxed pleadings to the court, even after he was repeatedly notified that he was in violation of the court's policy. Moreover, he paid no heed to the clerk's recurrent reminders that the court expected payment of his facsimile filing fees.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): The Hearing Board is disturbed by Respondent's approach to these proceedings. He casts his refusal to honor court orders and invoices as a campaign to protect the "substantive due process rights of people's access to the courts," depicting his difficulties with the e-filing system as illustrative of the system's "potential for severe prejudice to people's rights, especially the indigent." Respondent perceives his actions as "fundamental steps important to protecting the public," and he justifies his conduct with the claim that "sometimes an attorney must undertake to do things he knows will not be popular, simply because it is what he has to do." Respondent believes he handled the situation the best way he knew how at the time, given his experience and instincts. All told, Respondent testified that his conduct was "worth it, to the extent I helped people." Needless to say, Respondent refuses to acknowledge that his conduct in any way prejudiced the administration of justice, or that he could have challenged the Administrative Order in ways that

would have been both proper and protective of the public's right of access to the courts. We consider this factor in aggravation.

Substantial Experience in the Practice of Law – 9.22(i): Respondent was admitted to the Bar of Colorado in 1991. We consider in aggravation that Respondent has been licensed as an attorney in this jurisdiction for nineteen years.

Indifference to Making Restitution – 9.22(j): Respondent does not believe that the court's facsimile filing fees are valid charges (with the possible exception of $9.00), and he has made no effort to pay them during the course of these proceedings. To the contrary, Respondent insists that the court is required to compensate him because the court clerks used his private facsimile service without authorization.

Mitigating Factors

Absence of a Prior Disciplinary Record – 9.32(a): The People acknowledge Respondent has no prior disciplinary history, and we consider this factor in mitigation.

Character or Reputation – 9.32(g): Respondent testified to his good character, and the People provided no evidence in rebuttal. Specifically, Respondent mentioned that he looks for opportunities to help people through pro bono representation, and he stated that he has received the Colorado Supreme Court's pro bono legal services annual achievement of commitment award for the past five years.

Sanctions Analysis Under ABA *Standards* and Case Law

ABA *Standard* 6.22 calls for suspension in cases when a lawyer knowingly violates a court order or rule, resulting in injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. In contrast, ABA *Standard* 6.23 provides that reprimand, or public censure, is generally appropriate when a lawyer negligently fails to comply with a court order or rule, causing injury or potential injury to a client, or interference or potential interference with a legal proceeding.[41]

Even though we find Respondent knowingly violated the Administrative Order, we decide that application of ABA *Standard* 6.23, calling for public censure, is most appropriate here. Colorado cases weigh in favor of public censure for a single charge involving an attorney's failure to pay a law-related

[41] We do not specifically consider ABA *Standards* 6.12 and 6.13, which govern violations of Colo. RPC 8.4(d), because we find ABA *Standards* 6.22 and 6.23 more relevant to the conduct at issue.

debt.[42] In contrast, suspension has generally been warranted only when an attorney's failure to honor debts arising out of the attorney's legal practice was just one of multiple charges brought against the lawyer.[43]

Moreover, there is no direct parallel in this case to *In re Roose*,[44] in which the Colorado Supreme Court suspended an attorney for one year and one day for, among other things, failing to comply with a judge's command. There, a lawyer walked out of court in defiance of a judge's direct order that she remain and continue representing her client in a scheduled hearing. Not only was Roose found to have knowingly disobeyed the court's order, but she also made false statements to an appellate tribunal, failed to provide competent representation, and engaged in conduct prejudicial to the administration of justice. We consider the conduct in *Roose* far more egregious than that at issue here, in part because *Roose* involves multiple violations of the Rules of Professional Conduct, and in part because Roose's behavior was an active act of rebellion in open court that put her client's interests at risk. In contrast, Respondent's passive recalcitrance in the face of the court staff's written rebukes strikes us as less outrageous.

We also believe Respondent's lack of prior misconduct during his almost twenty years of practice militates in favor of public censure, as does the very minimal harm occasioned by his behavior. His misconduct, we trust, is not likely to be repeated. Accordingly, informed by the case law, and considering the nature of Respondent's conduct, as well as the mitigators and aggravators, we conclude public censure is appropriate in this instance to protect the administration of justice from further harm.

V. CONCLUSION

The principle that court orders and rules must be obeyed until such time as they are successfully challenged undergirds our system of law. When practitioners do otherwise, even with respect to filing requirements, they evidence a disregard for the integrity of the administration of justice. We therefore conclude Respondent's noncompliance with the court's facsimile policy, without concurrent efforts to challenge the legitimacy of the Administrative Order, violates Colo. RPC 8.4(d) and warrants public censure.

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[42] *See People v. Stauffer*, 745 P.2d 240, 242 (Colo. 1987) (publicly censuring attorney for failing to pay promissory note to expert witness for his testimony).

[43] *See In re Bauder,* 980 P.2d at 508 (suspending lawyer for thirty days for violating Colo. RPC 3.4(c) and 8.4(d) and C.R.C.P. 241.6(7)); *Huntzinger*, 967 P.2d at 162 (suspending attorney for three months for violating court order to pay attorney fees and failing to attend his own deposition); *Whitaker*, 814 P.2d at 816 (suspending lawyer for ninety days for failure to pay court reporter's bill, coupled with many other violations of the Rules of Professional Conduct). *See also In re Braghirol*, 680 S.E.2d 284, 288 (S.C. 2009) (suspending lawyer for nine months for failure to pay court reporter, failure to pay fee arbitration, and neglect of several matters).

[44] 69 P.3d 43, 49 (2003).

VI. ORDER

The Hearing Board therefore **ORDERS**:

1. **JAMES E. PRESTON**, Attorney Registration No. 20578, is hereby **PUBLICLY CENSURED.** The censure **SHALL** become public and effective thirty-one (31) days from the date of this order upon the issuance of an "Order and Notice of Public Censure" by the PDJ and in the absence of a stay pending appeal pursuant to C.R.C.P. 251.27(h). Respondent **SHALL** file any post-hearing motion or application for stay pending appeal **on or before Thursday, December 2, 2010.** No extension of time will be granted.

2. Respondent **SHALL** pay restitution of $132.00 to the Twenty-Second Judicial District, State of Colorado, for unpaid facsimile fees within thirty-one (31) days from the date of this order.

3. Respondent **SHALL** pay the costs of these proceedings. The People shall submit a "Statement of Costs" within fifteen (15) days from the date of this order. Respondent shall have ten (10) days thereafter to submit a response.