

People v. Brett Pruitt. 18PDJo75. April 25, 2019.

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Brett Pruitt (*pro hac vice* registration number 17PH5175) from the practice of law in Colorado. The disbarment took effect May 30, 2019.

Pruitt, a Texas lawyer, was subject to a pending disciplinary proceeding in Texas when he agreed to represent a Colorado client *pro hac vice* in a criminal matter. He found local counsel to sponsor his *pro hac vice* status; he told local counsel that he was in good standing in Texas. Pruitt then fraudulently certified to Colorado courts in his *pro hac vice* application that he was not subject to any disciplinary proceeding. During his representation of the Colorado client Pruitt was suspended in Texas, yet he continued to represent the Colorado client in violation of the Texas disciplinary order. When his misrepresentations were discovered, Pruitt presented to local counsel a forged Texas suspension agreement to conceal the effective date of his suspension.

Through his conduct, Pruitt violated Colo. RPC 3.3(a)(1) (a lawyer shall not knowingly make a false statement of material fact or law to a tribunal); Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); Colo. RPC 4.1(a) (a lawyer shall not, in the course of representing a client, knowingly make a false statement of material law or fact to a third person); and Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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: BRETT PRUIT, <i>Pro Hac Vice</i> #17PH5175	Case Number: 18PDJ075
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)	

Brett Pruitt (“Respondent”), a Texas lawyer, was subject to a pending disciplinary proceeding in Texas when he agreed to represent a Colorado client *pro hac vice* in a criminal matter. He fraudulently certified on his *pro hac vice* application that he was not subject to any disciplinary proceeding. While representing his Colorado client he was suspended in Texas, yet he continued to represent the client in violation of the Texas disciplinary order. Respondent also presented a forged Texas suspension agreement to local counsel who was sponsoring his *pro hac vice* status in order to conceal the effective date of his suspension. Respondent’s conduct, which violated Colo. RPC 3.4(c), 3.3(a)(1), 4.1(a), and 8.4(c), warrants disbarment.

I. PROCEDURAL HISTORY

On December 3, 2018, Jacob M. Vos, Office of Attorney Regulation Counsel (“the People”), filed a complaint with Presiding Disciplinary Judge William R. Lucero (“the Court”). That same day, the People sent copies of the complaint and citation by certified mail to Respondent’s registered address. Respondent failed to file an answer. By order dated February 11, 2019, the Court entered default, thereby deeming admitted the allegations and claims in the complaint.

On April 18, 2019, the Court held a sanctions hearing under C.R.C.P. 251.15(b). Vos represented the People; Respondent did not appear. During the hearing, the Court considered testimony from J. Matthew DePetro and admitted the People’s exhibits 1-6.

II. ESTABLISHED FACTS AND RULE VIOLATIONS

The Court adopts and incorporates by reference the averments in the admitted complaint, presented here in condensed form. Respondent is not licensed to practice law in Colorado. He was admitted to practice law in Texas in 1983. Respondent is subject to this

Court's jurisdiction in this disciplinary proceeding through his *pro hac vice* admission under registration number 17PH5175.¹

In March of 2015, Respondent was served with a Texas disciplinary complaint, which alleged that he had settled a 2013 case without client authority. That matter continued to proceed through the Texas disciplinary process.

In early August 2017, Respondent contacted J. Matthew DePetro, a Colorado attorney and his former high school classmate. Respondent wanted to represent client Shelia Tomasek in a misdemeanor criminal case in Douglas County, Colorado. He asked DePetro to serve as local counsel to his *pro hac vice* admission.

DePetro had never served as local counsel before, but he researched the requirements and agreed to serve as Respondent's local counsel in Colorado. DePetro inquired into Respondent's status with the Texas bar and learned that he was in good standing with no reported discipline. Respondent confirmed that he was in good standing in Texas.

On August 16, 2017, Respondent filed a verified motion for *pro hac vice* admission in Tomasek's case. Both he and DePetro signed the motion. In the motion, Respondent represented that he was not subject to any pending disciplinary action. That statement was false, however, because at the time Respondent was subject to the pending 2015 Texas disciplinary action. On August 18, 2017, Respondent's motion for *pro hac vice* admission was approved by the Colorado Supreme Court's Office of Attorney Registration. On the same day, the Douglas County court issued a corresponding order approving Respondent's *pro hac vice* admission in Tomasek's case.

On September 6, 2017, Respondent agreed in the Texas disciplinary case to a suspension of his law license for thirty months, all but three months stayed. The served portion of the suspension was to begin on November 1, 2017, and was to end on January 31, 2018. The remaining portion of the suspension was stayed subject to a number of conditions. Respondent was also required to notify his clients, courts, and opposing counsel of his suspension. But he failed to follow those requirements. Respondent has never been reinstated from the served portion of that suspension.

On December 18, 2017, Tomasek pleaded not guilty. Respondent was present with her and signed a notice of future court appearance and a case management order. He did not, however, notify Tomasek or the Douglas County court of his Texas suspension.

On February 5, 2018, Respondent telephoned DePetro, stating that he had been injured in a car accident the previous day. DePetro agreed to appear for Respondent at a hearing in Tomasek's case that same day. When DePetro arrived, he learned that the hearing had been vacated. DePetro telephoned Respondent, who assured him that he and Tomasek were ready for the trial set for March 6, 2018.

¹ See C.R.C.P. 251.1(b).

On March 5, 2018, DePetro was in the Douglas County courthouse for another matter when he learned that the judge in Tomasek's case was looking for him. DePetro checked the docket and saw Tomasek's name. He also learned from the clerk that Respondent had called and left a voicemail message stating that he would not be in court due to his Texas suspension. DePetro phoned Respondent, who confirmed his Texas suspension but provided few details and refused to answer DePetro's questions. DePetro returned to the courtroom and spoke with the deputy district attorney, who agreed to seek a continuance. The court continued the matter until March 29, 2018.

De Petro spoke with Tomasek, who did not know about Respondent's suspension. She told DePetro that Respondent had called her on March 1 to tell her that her case had been continued until April. DePetro then notified the court that Respondent had been suspended and moved to withdraw as Respondent's local counsel. DePetro also investigated Respondent's status in Texas and learned that he was indeed suspended.

On March 6, 2018, DePetro phoned the Texas bar to confirm the details of Respondent's suspension and learned that Respondent's suspension took effect on November 1, 2017. DePetro requested copies of the disciplinary paperwork from both the Texas bar and Respondent. That same day, Respondent sent DePetro paperwork indicating that he had signed an agreement to be suspended on January 15, 2018, with the served portion beginning on February 1, 2018, and ending on April 30, 2018. But that agreement was a forgery created by Respondent. That agreement also included the forged signatures of Texas District 9-1 Presiding Member Dirk Jordan and Texas Bar Assistant Disciplinary Counsel Dean Schaffer.

In this matter, Respondent violated four Rules of Professional Conduct:

- By knowingly violating the Texas disciplinary suspension when he practiced law in Colorado, Respondent violated Colo. 3.4(c). That rule provides that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.
- Respondent violated Colo. RPC 3.3(a)(1), which prohibits a lawyer from knowingly making a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. Respondent violated this rule when he certified in his motion for *pro hac vice* admission that he was not subject to any disciplinary action, knowing that his Texas disciplinary case was pending at the time.
- During his representation of Tomasek, Respondent knowingly made a false statement of material fact when he presented DePetro with a forged disciplinary agreement. Through this conduct, Respondent violated Colo. RPC 4.1(a), which provides that in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

- Respondent violated Colo. RPC 8.4(c), which proscribes conduct involving dishonesty, fraud, deceit, and misrepresentation, by presenting DePetro with the forged disciplinary agreement.

III. **SANCTIONS**

The American Bar Association *Standards for Imposing Lawyer Sanctions* (“ABA Standards”)² and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.³ When imposing a sanction after a finding of lawyer misconduct, the Court 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 duties of candor he owed to his client, the court, and local counsel. He also violated the duty owed to the legal profession to comply with the Texas order of suspension and to cease practicing law once suspended.

Mental State: The Court’s order entering default establishes that Respondent knowingly violated Colo. RPC 3.4(c), 3.3(a)(1), 4.1(a), and 8.4(c). The admitted facts in the complaint and DePetro’s testimony established, in fact, that Respondent committed the proven misconduct with an intentional state of mind. Respondent was served with the Texas disciplinary complaint in 2015; that action had been pending for two years when he certified to the Douglas County court in August 2017 that he was not subject to a pending disciplinary action. When he entered into an agreement to a suspension in Texas three months later, he concealed that suspension from DePetro, his client, and the court. He continued to practice law while suspended, including by appearing at a hearing with Tomasek and signing two court documents. When he was caught, he took great measures to cover up his misconduct, including forging the suspension agreement. These actions evince an intentional mental state.

In addition, DePetro credibly testified that Respondent had engaged in an ongoing course of deception throughout the Tomasek representation, beginning with lying about the pending Texas disciplinary action, in order to secure DePetro as local counsel for his *pro hac vice* admission. DePetro testified that Respondent gave him several excuses as to why he could not appear for Colorado court dates, including that his daughter had been sexually assaulted and that he had been injured in a car accident. In hindsight, and after receiving the forged document, DePetro now believes that both of Respondent’s statements were untrue. According to DePetro, Respondent also asked him to appear for a court date that had been previously vacated and lied to his client about her trial being continued. DePetro further recalled Tomasek being shocked and stunned to learn that Respondent had hid his suspension from her. DePetro felt strongly that Respondent intentionally forged or altered

² Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).

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

the suspension agreement to conceal the effective date of his suspension and his resulting misconduct.⁴

Injury: Tomasek faced serious potential injury because of Respondent's misconduct. According to DePetro, Tomasek had been charged with theft while serving felony parole, so it was possible that her parole would have been revoked and she would have served time in jail. After Respondent failed to appear for Tomasek's court date, DePetro continued to represent her until a resolution was met, sparing her from serious actual injury. DePetro testified that based on this experience he would never again agree to serve a local counsel for a *pro hac vice* applicant.

Respondent also seriously injured the legal system by lying on his *pro hac vice* application and by continuing to practice law in Colorado despite his suspension in Texas.

ABA Standards 4.0-7.0 – Presumptive Sanction

Several standards apply to Respondent's intentional dishonest and fraudulent misconduct. Under ABA Standard 5.11(b), disbarment is generally appropriate when a lawyer engages in any intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice. Of note, the Court finds that Respondent's lack of candor with his client, the court, and local counsel, coupled with his intentional forgery of a Texas suspension agreement, is directly related to the practice of law and seriously adversely reflects on his fitness as a lawyer.⁵

Respondent's dishonesty is also addressed by ABA Standards 6.11 and 6.21. ABA Standard 6.11 calls for disbarment when a lawyer, with the intent to deceive a court, makes a false statement, submits a false document, or improperly withholds material information, thereby causing serious or potential injury to a party, or a significant or potentially significant adverse effect on the legal proceeding. Likewise, under ABA Standard 6.21, disbarment is appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potential serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

⁴ Compare Ex. 1 (suspension order received from the Texas bar) with Ex. 2 (suspension order received from Respondent). DePetro testified that after comparing the two agreements he received, he concluded that Respondent had retyped the entire agreement and forged the signatures of disciplinary panel members, as the signatures are dramatically different. The Court also notes that the font used in the forged document is not the same as the font used in the official document that DePetro received from Texas.

⁵ See *In re Pautler*, 47 P.3d 1175, 1178-79 (Colo. 2002) (“[T]ruthfulness, honesty and candor are the core values of the legal profession”); see e.g., *People v. Kolbjornsen*, 917 P.2d 277, 279 (Colo. 1996) (finding that testifying falsely under oath to a tribunal was an “extremely serious ethical violation, and raises substantial questions about a lawyer’s fitness to continue to practice law”).

ABA Standard 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of the presumptive sanction to be imposed, while mitigating circumstances may warrant a reduction in the severity of the sanction.⁶ Six aggravating factors are present here: Respondent has a prior disciplinary offense in Texas, he acted with a dishonest and selfish motive; he committed multiple offenses; he engaged in bad faith obstruction of the disciplinary proceeding; he refused to acknowledge the wrongful nature of his misconduct; and he has substantial experience in the practice of law.⁷ Because Respondent did not participate in this proceeding, the Court knows of no mitigation.

Analysis Under ABA Standards and Colorado Case Law

The Court is aware of the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,⁸ mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."⁹ Though prior cases are helpful by way of analogy, the Court is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

Disbarment is the appropriate sanction in this case under the ABA Standards. Although no Colorado case is directly on point, the Colorado Supreme Court has disbarred lawyers who have forged documents and engaged in other misconduct. In *People v. Goldstein*, the Colorado Supreme Court disbarred a lawyer who made several misrepresentations, including forging a bankruptcy judge's signature, which resulted in his felony forgery conviction.¹⁰ In *People v. Marmon*, the Colorado Supreme Court disbarred a lawyer who admitted to falsifying an adoption decree by forging a district judge's signature with the intent to conceal the lawyer's negligence in the adoption case.¹¹ And a lawyer was disbarred in *People v. Finesilver* for forging a court order and converting substantial client funds.¹²

Here, while seeking *pro hac vice* admission in Colorado, Respondent intentionally concealed from local counsel and Colorado courts his pending Texas disciplinary case. After he was suspended in Texas, he then practiced law in Colorado in violation of the terms of his Texas disciplinary suspension and failed to notify the requisite parties of that suspension. When his deception was discovered, he intentionally forged a suspension agreement to hide his unauthorized practice of law.

⁶ See ABA Standards 9.21 & 9.31.

⁷ ABA Standards 9.22(a)-(b), (d)-(e), (g), and (i).

⁸ See *In re Attorney F.*, 2012 CO 57, ¶ 15; *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).

⁹ *In re Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

¹⁰ 887 P.2d 634, 643-44 (Colo. 1994).

¹¹ 903 P.2d 651, 652 (Colo. 1995).

¹² 826 P.2d 1256, 1256 (Colo. 1992).

In sum, the presumptive sanction and the predominance of aggravating factors, coupled with supporting case law, supports imposition of disbarment.

IV. CONCLUSION

Respondent's intentional conduct in this matter demonstrates his complete disregard of obligations owed to his client and to the legal system. He was admitted *pro hac vice* in Colorado under false pretenses. He furthered that deception after he continued to practice law in Colorado in violation of his suspension in Texas. When his misrepresentations came to light, he perpetuated his dishonesty by forging a disciplinary agreement to conceal his unauthorized practice of law. His extreme dishonesty and lack of candor warrants disbarment.

V. ORDER

The Court therefore **ORDERS**:

1. **BRETT PRUIT**, *pro hac vice* attorney registration number 17PH5175, shall be **DISBARRED**. The disbarment will take effect only upon issuance of an "Order and Notice of Disbarment."¹³
2. To the extent applicable, Respondent **SHALL** promptly comply with C.R.C.P. 251.28(a)-(c), concerning winding up of affairs, notice to parties in pending matters, and notice to parties in litigation.
3. Within fourteen days of issuance of the "Order and Notice of Disbarment," Respondent **SHALL** comply with C.R.C.P. 251.28(d), requiring an attorney to file an affidavit with the Court setting forth pending matters and attesting, *inter alia*, to notification of clients and other jurisdictions where the attorney is licensed.
4. The parties **MUST** file any posthearing motion **on or before Thursday, May 9, 2019**. Any response thereto **MUST** be filed within seven days.
5. The parties **MUST** file any application for stay pending appeal **on or before Thursday, May 16, 2019**. Any response thereto **MUST** be filed within seven days.
6. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** submit a statement of costs **on or before Thursday, May 9, 2019**. Any response thereto **MUST** be filed within seven days.

¹³ In general, an order and notice of disbarment will issue thirty-five days after a decision is entered under C.R.C.P. 251.19(b) or (c). In some instances, the order and notice may issue later than thirty-five days by operation of C.R.C.P. 251.27(h), C.R.C.P. 59, or other applicable rules.

DATED THIS 25th DAY OF APRIL, 2019.

[original signature on file]

WILLIAM R. LUCERO

PRESIDING DISCIPLINARY JUDGE

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