***People v. David R. Steinman*. 18PDJ038. January 11, 2019.**

A hearing board suspended David R. Steinman (attorney registration number 39853) for six months, with three months to be served and the remainder to be stayed upon successful completion of a one-year period of probation, with conditions. The Colorado Supreme Court affirmed the hearing board's decision on July 24, 2019, and Steinman's suspension took effect on August 21, 2019.

In 2017, Steinman was hired as a full-time deputy district attorney in the 18th Judicial District. The elected district attorney told Steinman that he had to stop working on outside cases, as required by state statute. Steinman later confirmed to the district attorney's office that he was no longer working on outside cases. Yet he represented a client in a civil matter for about six months while employed in the 18th Judicial District. Further, on several occasions he misrepresented his status as a deputy district attorney to a lawyer involved in the civil case. When his deceit was discovered, he misrepresented his involvement in the civil case to his supervisors in the district attorney's office. Steinman stipulated to judgment on the pleadings as to Colo. RPC 8.4(c) (it is professional misconduct for a lawyer to make misrepresentations).

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:** DAVID R. STEINMAN, #39853	Case Number: **18PDJ038**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)	

In 2017, David R. Steinman ("Respondent") was hired as a full-time deputy district attorney in the 18th Judicial District. The elected district attorney told Respondent that he had to stop working on outside cases, as required by state statute. Respondent later confirmed to the district attorney's office that he was no longer working on outside cases. Yet he represented a client in a civil matter for about six months while employed in the 18th Judicial District. Further, on several occasions he misrepresented his status as a deputy district attorney to a lawyer involved in the civil case. When his deceit was discovered, he misrepresented his involvement in the civil case to his supervisors in the district attorney's office. Respondent stipulated to judgment on the pleadings as to Colo. RPC 8.4(c), which states that it is professional misconduct for a lawyer to make misrepresentations. Respondent's multiple breaches of Colo. RPC 8.4(c) warrant a suspension of six months, with three months to be served and three months to be stayed upon successful completion of a one-year period of probation.

I. PROCEDURAL HISTORY

Jacob M. Vos, Office of Attorney Regulation Counsel ("the People"), filed a complaint with Presiding Disciplinary Judge William R. Lucero ("the PDJ") on June 11, 2018, alleging that Respondent violated Colo. RPC 4.1(a) and 8.4(c). Through his counsel, Patrick L. Ridley, Respondent answered on July 2, 2018, denying the People's claims.

On September 21, 2018, the Court granted the parties' stipulated motion to judgment on the pleadings. In that order, the Court entered judgment on Claim II (Colo. RPC 8.4(c)), dismissed Claim I (Colo. RPC 4.1(a)), and converted the disciplinary hearing to a hearing on the sanctions.

On November 15 and 16, 2018, a Hearing Board comprising the PDJ and lawyers John A. Sadwith and Patrick D. Tooley held a hearing under C.R.C.P. 251.18. Vos represented the People, and Respondent appeared with his counsel. The Hearing Board considered stipulated exhibits S1-S13, the People's exhibits 8-9, and the testimony of William Kelly, Michael J. Carrigan, Jacob Edson, Bob Troyer, Greg Goldberg, Jaime Steinman, Jaime Pena, and Respondent.

II. FACTUAL FINDINGS[1]

Background

Respondent was admitted to practice law in Colorado on May 20, 2008, under attorney registration number 39853. He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[2]

After graduating from St. Louis University School of Law in 1994, Respondent clerked for a federal judge in Texas and for the Fifth Circuit Court of Appeals. Following a one-year stint at a D.C. law firm, he worked for the U.S. Attorney's office in Texas from 1998 to 2000. He left Texas for a civil litigation firm in San Diego and then rejoined the U.S. Attorney's office—this time in Denver—from 2002 through about 2006. Respondent next held a series of private sector positions in Colorado. He managed Nestlé's North American litigation and served as general counsel for both RE/MAX and Concord Energy. He left Concord Energy for an energy-related company that terminated his employment in January 2017 due to a funding shortfall.

Events from January 2017 Through June 2017

Respondent began looking for new employment in early 2017. William Kelly, a partner at Kelly & Walker, a professional liability defense firm, offered Respondent work on a contract basis. Kelly and Respondent are close friends; according to Kelly, they have interacted since 2007 on "probably [a] daily basis, professionally and personally." Respondent completed some assignments for Kelly's law partner. In early May, the firm received a litigation referral involving a company called BullRest. Kelly's own time was already fully committed on a large class-action matter, but he accepted the *BullRest* matter because he thought Respondent was well suited to handle the case. No litigation was pending in *BullRest* at the time, and Kelly expected the matter to be resolved within days or weeks.

Later in May 2017, Respondent accepted a job as a deputy district attorney in the 18th Judicial District.[3] The new position would preclude him from continuing to work on any outside cases under C.R.S. section 20-1-201(1)(a), which provides that deputy district

[1] These findings are drawn from testimony at the disciplinary hearing where not otherwise indicated.
[2] *See* C.R.C.P. 251.1(b).
[3] Stip. Facts ¶ 3.

attorneys "shall not engage in the private practice of law nor receive any income from any private law firm." Though the statute provides an exception for part-time deputy district attorneys,[4] Respondent's new position was full-time.

On June 12, 2017, Respondent received a copy of the office's policy manual, which prohibits the private practice of law per C.R.S. section 20-1-201.[5] His employment file contained a separate document stating that deputy district attorneys are statutorily barred from engaging in the private practice of law and that the office "interprets this provision broadly."[6] On June 29, 2017, Respondent attended an orientation at the district attorney's office where office policies were discussed, and he signed a written acknowledgement that he had reviewed the office policy manual.[7] During the orientation, he was shown a slide presentation that also mentioned C.R.S. section 20-1-201. At the disciplinary hearing, Respondent testified that he did not pay close attention to the slide presentation and never noticed any reference to C.R.S. section 20-1-201 in his employment materials.

Around the time Respondent was offered the position as a deputy district attorney, he spoke to George Brauchler, the elected district attorney, who made clear that Respondent must extricate himself from his outside cases. Respondent conceded that Brauchler surely expected he would do so. After accepting the job, Respondent spoke to Brauchler's HR Director and to Matt Maillaro, a senior chief deputy district attorney, about whether he could keep any pending private cases. He was told he could not.[8] Respondent later confirmed to the office that he no longer was working on any such cases.[9]

Before starting work at the district attorney's office, Respondent told Kelly he wanted to transfer *BullRest* to him. Respondent remembers informing Kelly that his new job precluded such work; Kelly does not recall that part of the discussion. Kelly testified that he was opposed "in very strong terms" to taking over *BullRest* given the large class-action case he was handling. As Kelly recalls, Respondent replied that because Kelly had done him a favor and Respondent did not want to appear ungrateful, he would keep *BullRest* and work toward settlement.[10] Respondent told the Hearing Board that he believed he could wrap up the case within a month or two and that he wanted to avoid prejudicing his client, whom he liked and who lacked the funds necessary to hire a new lawyer. Neither Respondent nor Kelly informed the *BullRest* clients of Respondent's employment with the district attorney's office.

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[4] C.R.S. § 20-1-201(1)(b).

[5] Ex. S2 at 00066; *see* Ex. S5. This statutory prohibition differs from longstanding policy at the U.S. Attorney's office, where attorneys may engage in private practice in limited circumstances with managerial approval.

[6] Ex. S3.

[7] Ex. S4.

[8] Ex. S10 at 00036.

[9] Ex. S10 at 00036. Respondent disputes that he provided this confirmation to the district attorney's office. The Hearing Board, however, finds the exhibit memorializing his confirmation to be more reliable on this point.

[10] *See also* Stip. Facts ¶ 4.

Respondent started his position at the district attorney's office on June 29, 2017.[11]

Boulder County Filing

Notwithstanding his new position in the 18th Judicial District, on August 15, 2017, Respondent filed a brief in a civil case separate from *BullRest*—a Boulder County District Court matter involving his acquaintance Martin Tindall.[12] Respondent signed the thirty-page "Response to Subpoena Duces Tecum – Martin H. Tindall" and filed it on behalf of "Steinman Law Offices LLC."[13] Respondent admitted that the People asked him numerous times during the disciplinary investigation and proceeding whether his work on *BullRest* was the only civil work he completed while serving as a deputy district attorney, yet he never mentioned this filing.

Respondent first testified that he did not consider his filing of the response to subpoena duces tecum to be "civil work" and alternately testified that he did not disclose the filing to the People because he had forgotten about it. He explained to the Hearing Board that he submitted the document as a favor for Tindall because the lawyer who had prepared the response either could not or would not file it. Respondent said Tindall did not pay him to file the document and Respondent made clear to counsel in the case that he was not serving as counsel of record. He testified that he decided to file the response because it took him "five seconds" and "six dollars," and he was just "being helpful." When pressed, he admitted that he read the thirty-page filing before submitting it, which, of course, would have taken much longer than five seconds. The Hearing Board finds Respondent's testimony that he forgot about this matter not credible. This was a recent event that we believe he likely remembered. Even if the filing did somehow slip his mind, he failed to diligently research his activities of the relevant timeframe to ensure his representations to the People were correct.

Events from July 2017 Through December 2017

During summer 2017, the posture of *BullRest* shifted. Respondent's clients in the matter—BullRest and one of the company's founders—were involved in a dispute with the other founder. On July 13, Respondent filed on his clients' behalf a complaint he had drafted in May. He prepared the complaint and other court filings, most of which Kelly signed per firm policy. In their answer, the opposing party lodged counterclaims against Respondent's clients as well as one of BullRest's investors, an entity represented by Michael Carrigan, a lawyer at Holland & Hart.[14] Respondent's and Carrigan's clients had similar interests in the litigation.

[11] Ex. S5.
[12] Exs. 8-9. The case was captioned *Constantine Marks et al. v. Martin H. Tindall et al.*, no. 2012CV845.
[13] Exs. 8-9.
[14] Both Kelly and Carrigan viewed the opposing party's counsel as aggressive. Kelly attributed the delay in settling the *BullRest* case to opposing counsel's tactics.

Respondent continued to work about one hour a week on *BullRest*. He testified that he billed a total of thirty to thirty-two hours on the case from May through December 2017. During work hours at the district attorney's office, Respondent said, his efforts on *BullRest* were limited to a couple of lunchtime conference calls and answering emails on his personal email account.[15] Meanwhile, Respondent was transferred in August from the county court unit to the economic crimes unit managed by deputy district attorney Jacob Edson.

In October 2017 Respondent phoned Carrigan, whose caller ID identified the incoming call as from the 18th Judicial District.[16] Carrigan asked Respondent if he was working as a district attorney.[17] Respondent said no, falsely claiming that he had a meeting at the district attorney's office and was just using the phone there.[18] At the disciplinary hearing, Respondent explained that his relationship with Carrigan did not get off on the right foot, and he also had tired of other lawyers giving him a "hard time" about deciding to take the deputy district attorney position. He explained that people looked at him as if he had "three heads" when they learned of that decision. Further, he believed his status as a deputy district attorney was none of Carrigan's business. Respondent said that those factors, coupled with his ego, led him to tell Carrigan untruths.

A settlement conference in the *BullRest* case was scheduled for December 11 at Holland & Hart's offices. That morning, Respondent ran into Greg Goldberg, a Holland & Hart attorney with whom he was friendly, in the building's lobby. Goldberg asked what Respondent was doing for work, and he responded that he was a deputy district attorney at the 18th Judicial District. Respondent gave Goldberg his district attorney's office business card and told him he was working on a matter with Carrigan. Several days later, Goldberg mentioned this conversation to Carrigan.

Events of December 20 and 21, 2017

Carrigan felt it was in his client's interest to clarify whether Respondent was in fact working as a prosecutor. Carrigan believed Respondent's status as a deputy district attorney could complicate efforts to resolve *BullRest*, for instance if opposing counsel found out about the situation (an event that never came to pass) or if Respondent's employment status forced him to withdraw from the case.

[15] Although Respondent's emails during work hours may have arguably violated an 18th Judicial District policy requiring attorneys to dedicate their work time to office matters, Respondent worked more than forty hours a week as a district deputy attorney and fulfilled his prosecutorial duties, and Respondent's supervisor testified it was not uncommon for attorneys to occasionally send non-work-related emails during work hours.
[16] Stip. Facts ¶ 5.
[17] Stip. Facts ¶ 5.
[18] Stip. Facts ¶ 5.

On the morning of December 20, Respondent and Carrigan spoke by phone.[19] Respondent had hoped that this conversation would be directed toward resolving the *BullRest* case.[20] But Carrigan, who had asked another partner to listen in as a witness, instead asked Respondent again if he was working as a district attorney.[21] Respondent replied, "Absolutely not."[22] As Carrigan recalls, he then asked why Respondent had told "Greg" that he was working in that capacity, and Respondent asked, "Greg who?" According to Carrigan, when he replied, "Greg Goldberg," Respondent's tone switched, then he stammered and said he was working part-time at the district attorney's office. Respondent explained that he made this misrepresentation about part-time work in hopes the response would "placate" Carrigan so the case could move along. Respondent testified that when he made this misrepresentation he was unaware of C.R.S. section 20-1-201, including the statute's exception for part-time work.

Within hours of the call, at 1:28 p.m., Carrigan emailed Respondent, stating:

> To make sure my client doesn't have a complication in the future . . . I wanted to have a written record of what we discussed. Today you informed me:
>
> 1. Your employment with the 18th Judicial DA's office is part time (3 days a week).
>
> 2. The DA's office is aware that you continue to work on civil matters, including this one, and you're doing so with the office's full knowledge and approval.[23]

In the late morning of December 20, after his call with Carrigan but before receiving Carrigan's email, Respondent went to see Edson, asking whether it was important if he had continued to work on a civil case while employed as a district attorney.[24] Edson pressed Respondent for details.[25] Respondent misrepresented and downplayed the scope of his civil work.[26] Edson recalls Respondent saying that he had simply "brokered" or "facilitated" a "communication" or "conversation" by telephone between two parties who were involved

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[19] Carrigan's later email to Brauchler dated December 21 (described in the text below) states that this conversation took place at 12:30 p.m. on December 20. Ex. S9. Paragraph 13 of the stipulated facts and Respondent's testimony, on the other hand, place the conversation in the morning of December 20, before Respondent's later conversation with Edson. Given the inconsistent evidence on this point, the Hearing Board elects to adopt the chronology set forth in the stipulated facts.

[20] By this date, Respondent had learned that Kelly planned to remove him from Kelly & Walker's malpractice policy to make room for another lawyer at the start of the year. Respondent thus had additional motivation to quickly resolve the case.

[21] Stip. Facts ¶ 7.

[22] Stip. Facts ¶ 8.

[23] Stip. Facts ¶ 10; Ex. S6.

[24] *See* Stip. Facts ¶ 13.

[25] Stip. Facts ¶ 13.

[26] Stip. Facts ¶ 14.

in litigation, or words to that effect. Edson remembers Respondent relating that he was simply filling in for another attorney who was out of town. Based on Respondent's statements, Edson's impression was not that Respondent was representing one side in the litigation. Nevertheless, Edson expressed concern and mentioned the statutory proscription against deputy district attorneys engaging in private practice, noting that Respondent could lose his law license if he violated the statute. Edson remembers that Respondent expressed surprise upon mention of the statute.

Respondent stipulates that he knowingly misrepresented the scope of his involvement in the civil case to Edson.[27] He said he made these misrepresentations because he "panicked," fearful of losing his license to practice law. He also testified that this conversation was the first time he had learned of the statute. The Hearing Board finds incredible Respondent's testimony on the latter point. We do not believe that Respondent's misrepresentation to Carrigan about working as a part-time deputy district attorney was a coincidence and that Respondent was unaware of the exception in C.R.S. section 20-1-201(b) for part-time work. It simply strains credulity to believe that Respondent would have thought to excuse his work on the grounds that it was part-time had he not known of the statute.[28]

At 1:36 p.m., a couple of hours after Edson and Respondent's meeting, Edson emailed Respondent a citation to the statute.[29] Respondent immediately replied, "Well that sure can't get any more clear. I've already extricated myself."[30] This statement was dishonest; Respondent had not extricated himself from the *BullRest* case.[31] Respondent did call Kelly immediately after his conversation with Edson, saying that he needed to get off *BullRest*. Respondent remembers Kelly replying that he would contact his ethics counsel.

At 2:11 p.m., Respondent responded to Carrigan's email from earlier that day, stating: "All private client work has been disclosed and the work continues under 20-1-201(1)(b) until full time employment, which begins Jan 1. I will extricate myself from this matter before then, in fact, Bill Kelly will take over after this weekend."[32] At the time he sent this email, Respondent still had not fully disclosed his private work to the district attorney's office, and

[27] Stip. Facts ¶ 19.
[28] As noted above, the Hearing Board elects to adopt the parties' stipulation that Respondent's December 20 conversation with Carrigan preceded Respondent's conversation with Edson. If the events were in fact reversed, as suggested by exhibit S9, it would be all the more clear that Respondent's mention of part-time work to Carrigan was intentionally deceptive because it is undisputed that Edson mentioned the statute to Respondent during their conversation the morning of December 20. Even accepting the chronology set forth in the stipulated facts, however, we conclude that Respondent surely knew of the statute through some source before speaking with Carrigan on December 20.
[29] Stip. Facts ¶ 15; Ex. S7.
[30] Stip. Facts ¶ 15; Ex. S7.
[31] Stip. Facts ¶ 16.
[32] Stip. Facts ¶ 11; Ex. S6.

of course he had been working there full-time for almost six months.[33] Respondent thus stipulates that he knowingly misrepresented his work at the district attorney's office to Carrigan.[34] Soon after Carrigan received Respondent's email, Carrigan advised Brauchler of Respondent's conflicting representations about his employment status at the district attorney's office.[35] At Brauchler's request, Carrigan supplied the December 20 emails he had exchanged with Respondent.

Edson recalls meeting with Respondent one-on-one a second time on December 20. Edson gathered from the conversation that the extent of Respondent's involvement in private litigation was greater than what he previously indicated, though Respondent did not admit he had been representing a civil client. Respondent maintains, however, that he specifically mentioned to Edson involvement in a "settlement conference." Edson asked Respondent to write an account of what had happened in the civil matter, and sometime on December 20 or 21 Respondent produced the requested account. The account, as Edson recalls, essentially matched the narrative Respondent related during their first conversation on December 20: that he had merely facilitated a conversation between two parties.[36]

In a separate meeting, Respondent and Edson spoke with Maillaro, the senior chief deputy district attorney, on December 20. As memorialized in a memorandum Maillaro wrote, Respondent related that he had "taken part in a settlement conference" but said that the extent of his representation was "very little" and he "barely did anything."[37]

On the morning of December 21, Respondent came to see Edson again. Edson recalls that Respondent's demeanor had changed, and Respondent said Holland & Hart's ethics division would be contacting the district attorney's office. Although Respondent testified that he had "recovered [his] faculties" by the time of this conversation, Edson said that Respondent did not give him a "straight answer" when Edson asked what he was talking about. Edson testified that Respondent did not mention the name BullRest or provide any dates or timeframes related to the civil matter. Later that day, Edson was shown the December 20 emails between Carrigan and Respondent, which Edson deemed to be in "very significant" conflict with what Respondent had previously told him.

During the afternoon of December 21, 2017, Respondent was terminated at a meeting with Edson, two managers, the HR Director, and Brauchler.[38] The termination provided for no possibility of rehiring. Respondent was shown a copy of his December 20 email to Carrigan, and he admitted the email was dishonest.[39]

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[33] Stip. Facts ¶ 12.
[34] Stip. Facts ¶ 18.
[35] Ex. S9.
[36] This document was not admitted into evidence, and its whereabouts are unknown.
[37] Ex. S10 at 00037.
[38] Ex. S10 at 00036. Brauchler attended the meeting by phone.
[39] Ex. S10 at 00036.

Post-Termination Events

Respondent self-reported his misconduct to the People immediately after his firing. He also called Carrigan the same day to apologize. Carrigan found his apology to be "very sincere."

After Respondent's termination, Edson took over most of Respondent's caseload; another attorney in the office assumed responsibility for other cases. It took three or four months to replace Respondent in the economic crimes unit. Edson explained that the unit prefers to have three attorneys but that more often than not the unit has only two attorneys because it is a relatively difficult position to fill.

After speaking with Carrigan several times, Kelly pulled Respondent off *BullRest* and terminated his firm's independent contractor relationship with him. Kelly stepped in to wrap up *BullRest*. He had been on the pleadings and copied on emails, so he testified that he was already "up to speed" on the case. According to Kelly, the matter settled in principle in January or February 2018 and was formally resolved a few months later.

Despite Respondent's positive performance review before his firing,[40] several witnesses testified that the misrepresentations at issue in this case will effectively preclude him from ever again being hired as a prosecutor.

As of the date of the disciplinary hearing, Respondent was working once more as a general counsel. He testified that he has experienced a number of physical symptoms, such as insomnia, as a result of the events underlying this case. He also said he has been drinking too much. Respondent's wife, Jaime Steinman, similarly testified that he has suffered significant emotional and physical consequences. Respondent credibly testified that he deeply regrets his misrepresentations to Carrigan and Edson, he loved his work in the 18th Judicial District, and he feels he let down his colleagues and family. He further regrets putting Carrigan in the difficult position of having to report his misconduct.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[41] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[42] 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 lawyer's misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

[40] Ex. S11 at 00057.
[41] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).
[42] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

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

Duty: Respondent failed in the duty he owes to the public to maintain his personal integrity. As explained in the ABA *Standards*, "[t]he public expects lawyers to be honest and to abide by the law; public confidence in the integrity of officers of the court is undermined when lawyers engage in illegal or other dishonest conduct."[43] Further, Respondent neglected his duty to the legal profession. He had an obligation to the district attorney's office to abide by its rules and policies and to honestly deal with the office. As Edson testified, "a prosecutor is one that the executive, judicial, and the citizens of the district place a tremendous amount of faith in." Knowing misrepresentations by a prosecutor compromise the underpinnings of that faith. Indeed, we heard testimony that such misrepresentations are viewed so negatively as to effectively operate as a bar to future prosecutorial employment.

Mental State: The parties agree that Respondent acted knowingly.[44] The Hearing Board further finds that Respondent acted intentionally as to the numerous misrepresentations he made on December 20 and 21, when he avoided telling the truth for the purpose of retaining his job. Under the ABA *Standards*, "intent" is defined as "the conscious objective or purpose to accomplish a particular result."[45]

Injury: We consider both the potential harm and the actual harm that Respondent's conduct caused in several contexts.

It is undisputed that in the *BullRest* litigation Respondent's misrepresentations caused no actual injury to any party. But Carrigan perceived a potential for harm to his client if Respondent's prosecutorial responsibilities forced him to withdraw from the case. Carrigan noted that he worried about having to disclose Respondent's employment to opposing counsel, though he never in fact had to do so. And Respondent's failure to inform his clients that he was working as a deputy district attorney and was obligated to extricate himself from private cases caused those clients potential harm because of the not-insignificant risk that new counsel would need to take over the case mid-stream. Although Kelly ultimately took over *BullRest*, he initially declined to handle the case due to other commitments. Had the case evolved differently, the *BullRest* clients might have been forced to hire new counsel and pay legal fees for that lawyer to get up to speed, thereby delaying the litigation. Even so, we find the potential for harm to the parties in the *BullRest* matter was not substantial.

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[43] ABA *Annotated Standards for Imposing Lawyer Sanctions* at 209.

[44] The ABA *Standards* define "knowledge" as the "conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." *Id.* at xxi.

[45] *Id.*

Respondent's varied misrepresentations underlying this case did cause some actual harm by requiring several people to needlessly expend time and resources. For example, Kelly had to speak with Carrigan, contact his ethics counsel, and wrap up *BullRest*; Carrigan spent time communicating with Kelly, his partners, and Brauchler about Respondent's misrepresentations; and various employees within the district attorney's office had to dedicate their energies to addressing Respondent's misconduct. In addition, Respondent's precipitous departure from the office led to a staffing reduction in the economic crimes unit for several months, which was less than optimal, though not unusual. The Hearing Board considers this category of injury to be relatively modest.

The last category of harm is harm to the legal profession. Respondent has contributed to a perception of lawyers—and prosecutors—as dishonest. As the Colorado Supreme Court has commented, "Lawyers serve our system of justice, and if lawyers are dishonest, then there is a perception that the system, too, must be dishonest. Certainly, the reality of such behavior must be abjured so that the perception of it may diminish."[46] Respondent's dishonesty also undermined trust among lawyers. Edson clearly was deeply troubled by Respondent's deceptions, and Carrigan testified that he viewed Respondent's misrepresentations to him as significant in the "lawyer-to-lawyer" context.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

ABA *Standard* 7.2 states that suspension is generally appropriate when a lawyer knowingly engages in conduct that violates a duty owed as a professional, thereby causing injury or potential injury to a client, the public, or the legal system. The Hearing Board finds that these elements are met here, and we thus apply *Standard* 7.2.[47]

Examination of other arguably relevant standards bolsters the decision to apply a presumptive sanction of suspension here. *Standard* 5.22 calls for suspension where a lawyer in a governmental position knowingly fails to follow proper procedures or rules, thereby causing injury or potential injury to a party or to the integrity of the legal process. In our view, *Standard* 5.22 is less well suited to this case than to cases in which legal proceedings themselves are affected by the misconduct, but the fact that this standard fits here as well—and has been applied in comparable circumstances[48]—supports the determination that suspension is the correct presumptive sanction in this case.

Consideration of *Standard* 5.0 leads us to the same conclusion. Disbarment is generally appropriate under *Standard* 5.11(b) when a lawyer intentionally engages in

[46] *In re Pautler*, 47 P.3d 1175, 1179 (Colo. 2002).
[47] *See, e.g., id.* at 1184 (citing *Standard* 7.2 as applicable to a prosecutor's deceitful conduct); *Fla. Bar v. Kossow*, 912 So.2d 544, 545, 548 (Fla. 2005) (applying *Standard* 7.2 where a lawyer violated his law firm's policy barring outside legal work and lied to his firm about that work).
[48] *In re Smith*, 29 So. 3d 1232, 1237 (La. 2010) (applying *Standard* 5.22 where an assistant district attorney represented criminal defendants in contravention of applicable law).

dishonesty or misrepresentation (other than certain crimes listed in *Standard* 5.11(a)), where that conduct seriously adversely reflects on the lawyer's fitness to practice law. *Standard* 5.13 calls for public censure when a lawyer knowingly engages in "any other conduct"[49] that involves dishonesty or misrepresentation and that adversely reflects on the lawyer's fitness. We deem neither *Standard* 5.11(b) nor *Standard* 5.13 a good fit here. As to *Standard* 5.11(b), although Respondent's likely disqualification from future prosecutorial positions could be viewed as evidence that his misconduct seriously adversely reflects on his fitness to practice, his misrepresentations were not made in his role in prosecuting cases, so we find that his misconduct does not adversely reflect on his fitness to a serious degree. Meanwhile, *Standard* 5.13 does not adequately address the gravity of the misconduct here, which was intentional rather than merely knowing.[50] Analysis under *Standard* 5.0 thus suggests that the presumptive sanction should occupy a middle ground between disbarment and public censure, reinforcing our sense that applying the presumptive sanction of suspension under *Standard* 7.2 coheres with the overall thrust of the ABA *Standards*.

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations that may justify an increase in the degree of the sanction to be imposed, while mitigating factors may warrant a reduction in the severity of the sanction.[51] As explained below, the Hearing Board applies four factors in aggravation, one of which carries relatively little weight, and five mitigating factors, one of which merits comparatively little weight. We evaluated the following factors.

Aggravating Factors

Dishonest or Selfish Motive – 9.22(b): We believe Respondent's misrepresentations on December 20 and 21 were motivated by the selfish goals of covering up his misconduct and retaining his job.

Pattern of Misconduct – 9.22(c): Respondent repeatedly deceived others over the course of many months. Under this rubric, we consider not only Respondent's misrepresentations to Carrigan and Edson but also his failure to inform Brauchler that he had not extricated himself from civil cases, as Brauchler expected him to do. Respondent's

[49] The phrase "other conduct" refers to the types of conduct addressed in *Standards* 5.11(a), 5.11(b), and 5.12. *Standard* 5.11(a) addresses serious criminal conduct that involves false swearing, theft, intentional killing, and other offenses not at issue here, while *Standard* 5.12 addresses knowing criminal conduct that does not involve the elements listed in *Standard* 5.11(a) and that seriously adversely reflects on the lawyer's fitness to practice.

[50] It has been noted that *Standard* 5.0 is not a "perfect fit" for the type of intentional misconduct at issue in this case. *See In re Flannery*, 47 P.3d 891, 895 (Or. 2002).

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

filing of the response to subpoena duces tecum in Boulder County District Court is further evidence of a pattern of obscuring relevant facts.[52]

Substantial Experience in the Practice of Law – 9.22(i): Respondent has practiced law for a quarter century. His lengthy practice is an aggravating factor here.

Status as Prosecutor: We consider Respondent's status as a prosecutor to be an additional aggravating factor.[53] We recognize that Respondent's actions did not involve making false statements to a tribunal or defense counsel, delaying the disclosure of or concealing exculpatory evidence, or engaging in criminal conduct—the type of scenarios that might well justify applying significant weight to this aggravating factor given the potential to compromise the integrity of the criminal justice system and to undermine public trust in the system. But Respondent's outright misrepresentations and misrepresentations by omission to Edson, Maillaro, and Brauchler were related to and occurred in his capacity as a deputy district attorney and reflected adversely on the integrity of the district attorney's office. As such, we apply this factor in aggravation, though we accord it relatively little weight.

Mitigating Factors

Absence of Prior Disciplinary Record – 9.32(a): During his long tenure as a lawyer, Respondent has not been disciplined. This factor deserves consideration in mitigation.

Timely Good Faith Effort to Rectify Consequences of Misconduct – 9.32(d): Respondent called Carrigan the day he was terminated to apologize, and Carrigan accepted the apology as sincere. That same day, Respondent self-reported his misconduct to the People. We give Respondent relatively little credit for these efforts. Awarding greater weight would be inappropriate given that he made no attempts to rectify either his misrepresentations to Carrigan or his unauthorized civil practice until his misconduct had been discovered.[54]

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[52] We do not treat Respondent's failure to disclose the Boulder County filing to the People as a deceptive practice in this proceeding under *Standard* 9.22(f) because, although we believe that Respondent should have remembered and disclosed this filing, we do not find clear and convincing evidence that he had a deceptive intent.

[53] *See In re Rosen*, 198 P.3d 116, 121 (Colo. 2008) ("While the ABA Standards enumerate a number of . . . aggravating and mitigating factors, they are expressly intended as exemplary . . . ."); *In re Pautler*, 47 P.3d at 1180 (holding prosecutors to a higher ethical standard than other lawyers) (citing *People v. Reichman*, 819 P.2d 1035, 1038-39 (Colo. 1991)); *People v. Sharpe*, 781 P.2d 659, 660 (Colo. 1989) (considering a respondent's status as a prosecutor when he used a racial epithet as an aggravating factor); *People v. Groland*, 908 P.2d 75, 77 (Colo. 1995) (treating a respondent's status as a prosecutor at the time of criminal misconduct as an aggravating factor); *People v. Freeman*, 885 P.2d 205, 206 (Colo. 1994) (same).

[54] *See People v. Goldstein*, 887 P.2d 634, 642-43 (Colo. 1994) (declining to apply *Standard* 9.32(d) where a lawyer did not confess to his misdeeds or give information to his firm until he was confronted by members of his firm, when it was clear his misconduct would soon be discovered); *cf. In re Pautler*, 47 P.3d at 1184 (finding that the respondent's failure to correct his deceptive actions "[a]fter the immediacy of the events waned" was an

Character or Reputation – 9.32(g): Four lawyers testified about Respondent's character and reputation within the Colorado legal community. First, Bob Troyer, the acting U.S. Attorney in Denver from 2016 until October 2018, testified that he has known Respondent since 2001. They worked together while Respondent was serving as a prosecutor and later as a general counsel, and they have had a social relationship. Troyer recalls that Respondent was energetic, ethical, creative, and a hard worker. In fact, Troyer recommended that Concord Energy hire Respondent due to his ethical character. Troyer said that his own opinion of Respondent as a truthful lawyer is shared by others in the community.

Second, Jaime Pena is a friend of Respondent; they have known each other for decades, since working together as prosecutors in Texas. Their employment as federal prosecutors in Denver also overlapped around 2004 or 2005. Pena characterized Respondent's misconduct as a "one-off." Pena said that Respondent is a "fantastic lawyer," that he has never known Respondent to be dishonest, and that Respondent has had a number of "blue chip" jobs. On cross-examination, Pena testified that he understood Respondent's misrepresentations in this case to have occurred over the space of one or two days or perhaps a week.

Goldberg and Kelly, who were primarily called as fact witnesses, also provided character testimony. Goldberg testified that Respondent has a reputation for truthfulness, while Kelly offered that Respondent is a "straight shooter" and a "great father" who is respected in the legal community as a very good lawyer and an honest person.

On the whole, we believe that Respondent deserves credit in mitigation for his good character and reputation. We note that the testimony provided by these witnesses—all friends of Respondent—reflected generalities rather than concrete examples that would enable us to better understand Respondent's character. In addition, Pena and Goldberg understood Respondent's misconduct to be more limited in nature than it was in fact. We assign this mitigating factor average but not great weight.[55]

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independent aggravating factor). *But see In re Fischer*, 89 P.3d 817, 821 (Colo. 2004) (noting that even restitution made after the initiation of disciplinary proceedings may warrant some consideration in mitigation).

[55] *See* ABA *Annotated Standards for Imposing Lawyer Sanctions* at 473 (citing Leslie C. Levin, *The Emperor's Clothes and Other Tales About the Standards for Imposing Lawyer Discipline Sanctions*, 48 Am. U. L. Rev. 1 (1998) for the proposition that "character and reputation evidence often [is] of little probative value and should be admitted only when [the] witness has substantial direct knowledge of [the] lawyer's practice, is aware of [the] alleged misconduct, and is able to provide testimony about [the] character traits at issue in [the] misconduct"); *Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Tofflemire*, 689 N.W.2d 83, 92 (Iowa 2004) (in a case involving improper billing and timekeeping practices, noting that the character witnesses who spoke to the respondent's trustworthiness, honesty, and other traits were not familiar with the respondent's job duties and performance, nor were they familiar with her billing or timekeeping practices, and thus apparently according diminished weight to that mitigating factor).

Imposition of Other Penalties or Sanctions – 9.32(k): Respondent permanently lost his position at the district attorney's office. He persuasively testified that he loved working as a prosecutor, and we believe this factor deserves consideration in mitigation.

Remorse – 9.32(l): Respondent testified credibly that he rues his decisions to misrepresent his status at the district attorney's office to Carrigan and to misrepresent the scope of his civil work to Edson. Jaime Steinman corroborated that testimony, painting a picture of a man who deeply regrets his misconduct, as well as the effects of that misconduct on his family and his colleagues. We note that Respondent did not express remorse for deciding to work on *BullRest* in the first instance after leading Brauchler to believe he would stop working on outside cases. Nevertheless, we assign Respondent credit in mitigation for his other demonstrable remorse.

Analysis Under ABA *Standards* and Case Law

Here, the People assert that Respondent's misconduct should be met with a suspension for one year and one day. Respondent, on the other hand, believes that a private admonition is the appropriate sanction.

As the Colorado Supreme Court's *In re Attorney F.* decision explains, hearing boards must follow a "two-step framework" for analysis: first, a presumptive sanction is identified based on the applicable duty, injury, and mental state, and second, that presumptive sanction may be adjusted based on consideration of aggravating and mitigating factors.[56] *Attorney F.* indicates that this analysis may be informed by Colorado Supreme Court cases, particularly those decided after the adoption of our current disciplinary system in 1999.[57] Hearing boards are called upon to exercise discretion in imposing a sanction by carefully applying aggravating and mitigating factors.[58] Because "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases,"[59] the appropriate sanction for a lawyer's misconduct must be determined on a case-by-case basis.

Where suspension is the presumptive sanction under the ABA *Standards*, a six-month served suspension is typically viewed as the baseline, to be adjusted based on aggravators and mitigators.[60]

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[56] *In re Attorney F.*, 2012 CO 57, ¶ 19.

[57] *Id.* at ¶ 20.

[58] *See id.* at ¶ 19; *In re Fischer*, 89 P.3d at 822 (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).

[59] *In re Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d at 121).

[60] *See* ABA *Standard* 2.3 ("Generally, suspension should be for a period of time equal to or greater than six months . . . ."); *In re Cummings*, 211 P.3d 1136, 1140 (Alaska 2009) (imposing a three-month suspension based on a six-month "baseline" set forth in ABA *Standard* 2.3, considered in conjunction with applicable mitigating factors); *In re Moak*, 71 P.3d 343, 348 (Ariz. 2003) (noting that the presumptive suspension period is six

In reviewing case law, we have considered several factors in gauging the comparability of this particular matter to other cases, including: whether the case involved misrepresentations; whether the lawyer in question was a prosecutor and whether the misconduct took place in a prosecutorial role; whether the lawyer immediately took steps to rectify the misconduct; whether the lawyer had an arguably good motive for the misconduct; whether the misconduct involved illegality or abuse of office; whether the lawyer engaged in an isolated instance or a pattern of misconduct; and the balance of aggravators and mitigators. We have been unable to find any cases from Colorado or other states in which these factors align precisely with the factors in the matter at hand. Below, we analyze a range of cases that are factually analogous to the instant case in at least some dimensions.

The parties have drawn our attention to two Colorado opinions in particular.[61] The highest-profile Colorado case involving prosecutorial dishonesty is *In re Pautler*.[62] Pautler, a deputy district attorney, assisted with an effort to persuade a suspect to surrender in the immediate wake of three murders.[63] During a telephone call with a sheriff, the suspect said he would not surrender without legal representation.[64] Pautler then impersonated a defense attorney and spoke to the suspect, who believed Pautler represented him.[65] The suspect surrendered.[66] Pautler made no effort to correct his misrepresentations to the suspect in the following days.[67] The defense attorney who later represented the suspect had trouble gaining the suspect's trust due to Pautler's deception; the suspect decided to proceed pro se and was sentenced to death.[68] In the ensuing disciplinary proceeding, the Colorado Supreme Court emphasized lawyers' duty of honesty, declaring: "Lawyers serve our system of justice, and if lawyers are dishonest, then there is a perception that the system, too, must be dishonest."[69] The court commented that prosecutors, in particular, serve as "a representative of the system of justice" while also noting that Pautler believed

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months); *In re Stanford*, 48 So.3d 224, 232 (La. 2010) (imposing a six-month deferred suspension after considering the "baseline sanction" of six months served and deviating downward from that sanction based on one aggravating factor, four mitigating factors, and no actual harm caused); *Hyman v. Bd. of Prof'l Responsibility*, 437 S.W.3d 435, 449 (Tenn. 2014) (describing a six-month served suspension as a baseline sanction, to be increased or decreased based on aggravating or mitigating circumstances); *In re McGrath*, 280 P.3d 1091, 1101 (Wash. 2012) ("If suspension is the presumptive sanction, the baseline period of suspension is presumptively six months.").

[61] We do not devote space to addressing the sanctions analysis on remand in *Attorney F.*, a recent case involving dishonesty by a prosecutor; that hearing board decision was not published or otherwise made public.

[62] 47 P.3d 1175.

[63] *Id*. at 1176-77.

[64] *Id*. at 1177.

[65] *Id*. at 1177-78.

[66] *Id*. at 1178.

[67] *Id*.

[68] *Id*.

[69] *Id*. at 1179.

his actions were protecting the public.[70] Considering Pautler's intentional mental state, the actual injury he caused, and his failure to remediate his conduct, the court affirmed the hearing board's imposition of a stayed three-month suspension.[71] The Hearing Board finds it difficult to compare *Pautler* to the instant case because *Pautler* involved highly unusual facts relating to the capture of a suspect who had threatened to kill additional victims, serious injury stemming from the misconduct, and a course of deceptive actions limited to a few hours or less.[72]

In re Rosen is a more recent case involving dishonesty, this time on the part of an attorney in private practice.[73] Rosen was hired to help settle a personal injury claim.[74] He submitted a settlement demand to the insurer after his client had died and did not notify the insurer of his client's death.[75] He then rejected a counteroffer, saying his client needed additional treatment.[76] Rosen initially believed that the client's claim for pain and suffering would remain valid after his death, yet he soon learned that no valid claim in fact existed.[77] When he did notify the insurance company of his client's death, he falsely said it had occurred after the settlement offer.[78] The insurer ultimately requested return of the settlement check, and Rosen immediately complied.[79] The Colorado Supreme Court refused to disturb the hearing board's finding that Rosen did not intend to permanently deprive the insurer of the funds at issue.[80] Considering a predominance of mitigating factors, the court upheld the hearing board's imposition of a stayed six-month suspension.[81] Three dissenting members of the court would have imposed a served suspension of one year and one day.[82] We find *Rosen*, like *Pautler*, somewhat dissimilar; *Rosen* did not involve misconduct by a prosecutor and the mitigating factors substantially outweighed aggravators there.[83]

A case from Louisiana is somewhat more factually analogous to the instant case. *In re Smith* involved an attorney in private practice who was hired as an assistant district

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[70] *Id.* at 1183-84.
[71] *Id.* at 1184. In its sanctions analysis, the court commented that "deceitful conduct done knowingly or intentionally typically warrants suspension, or even disbarment." *Id.* Notably, the *Pautler* court did not use the two-step framework for sanctions analysis later explicated in *Attorney F.*: although the *Pautler* opinion discusses presumptive sanctions as well as aggravating and mitigating factors, the opinion does not identify a single presumptive sanction as the starting point for analysis. *See id.*
[72] *Id.* at 1177-80.
[73] 198 P.3d 116.
[74] *Id.* at 117-18.
[75] *Id.* at 118.
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.* at 119.
[81] *Id.* at 121.
[82] *Id.* at 121-23.
[83] It appears that the *Rosen* court applied four mitigating factors as well as two aggravating factors that carried limited weight. *Id.* at 121.

attorney.[84] Smith represented two criminal defendants within six weeks of taking his oath as a prosecutor, in violation of both the Louisiana constitution and the state's criminal procedure code.[85] He appeared twice in court for the first defendant and once for the second.[86] Further, he did not immediately withdraw from the second representation upon taking the prosecutorial position, even though the client's trial was scheduled within a few weeks, nor did he give his client an accounting.[87] His criminal representations created concurrent conflicts of interest.[88] Smith was found to have acted knowingly but not intentionally because he apparently believed his perfunctory court appearances to wind up matters for his clients would cause no harm.[89] Indeed, no concrete harm was found, and it was deemed likely that the courts and relevant parties in the underlying matters had consented to the conflicts, though any such consent was not in writing.[90] Applying ABA *Standard* 5.22 (suspension is generally appropriate when a lawyer in a governmental position knowingly fails to follow proper procedures or rules, causing injury or potential injury to a party or to the integrity of the legal process) and considering four aggravators and no mitigators, the court imposed a served suspension of one year and one day.[91] *Smith* differs significantly from the instant case in that *Smith* represented criminal defendants, while Respondent acted as an attorney in civil matters.

The *Smith* case involved moonlighting by a prosecutor (in contravention of the state's constitution, unlike here) but it did not appear to contain the element of explicit dishonesty central to the instant case. The *In re Flannery* decision from Oregon, conversely, addresses deceitful conduct by a prosecutor but not the element of moonlighting.[92] There, a deputy district attorney who had moved two years earlier to Washington state continued to use his Oregon driver's license.[93] At some point he realized that his license was expired and that unless he immediately replaced it he would be unable to rent a car during an upcoming trip.[94] He chose the quicker route of renewing his Oregon license, listing a false address in that state.[95] In doing so, he signed an acknowledgement that making a false statement was a violation of law.[96] When this conduct was discovered, he pleaded guilty to a misdemeanor and lost his position as a prosecutor.[97] Considering a public censure as the presumptive

[84] 29 So. 3d at 1233.
[85] *Id*. The decision also considered Smith's failure to remain current on continuing legal education and bar registration requirements. *Id*. at 1234.
[86] *Id*. at 1233.
[87] *Id*. at 1234.
[88] *Id*.
[89] *Id*. at 1235.
[90] *Id*.
[91] *Id*. at 1237.
[92] 47 P.3d 891.
[93] *Id*. at 892.
[94] *Id*.
[95] *Id*.
[96] *Id*.
[97] *Id*.

sanction and taking into account two aggravators and five mitigators as well as the determination that the conduct was unlikely to reoccur, the court imposed a public censure.[98] *In re Flannery*, unlike the case before us, involves a single notable instance of dishonesty that was wholly unrelated to the lawyer's service as a prosecutor.

We have also considered cases involving lawyers in private practice who misled their employers. The Florida Supreme Court imposed a served thirty-day suspension on a lawyer who violated his law firm's policy barring outside legal work and lied to his firm about that work.[99] Somewhat similarly, where a lawyer who was employed full-time by a law firm concealed his separate law practice from the firm, used firm resources for his own benefit, and exposed the firm to potential malpractice liability, the Missouri Supreme Court suspended the lawyer's license indefinitely, with leave to apply for reinstatement after six months.[100] That sanction took into account a great preponderance of aggravating factors.[101] And in Maryland, the state supreme court imposed a ninety-day served suspension on a federal agency lawyer who intentionally concealed relevant facts during her job application process.[102]

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[98] *Id*. at 234-37. Another case involving a prosecutor's criminal conduct is *Freeman*, 885 P.2d 205. There, the Colorado Supreme Court accepted a stipulation to a served six-month suspension for a Boulder prosecutor who received a deferred sentence after pleading guilty to a class-five felony—accessory to a crime. *Id*. at 206. The plea was based on a stipulation that the lawyer found drug paraphernalia in her home but did not use it; rather, she placed it in the trash on the curb to keep it from being used by others. *Id*. The only aggravating factor present was the lawyer's status as a prosecutor, while seven factors mitigated the misconduct. *Id*. at 206-07. We also recognize that there is a separate line of case law involving prosecutors who abuse their positions. *See, e.g., People v. Larsen,* 808 P.2d 1265, 1265-68 (Colo. 1991) (imposing three-year suspension on elected district attorney who bought marijuana from an employee to give to his wife and pleaded guilty to three misdemeanors). Although we heed the *Larsen* court's commentary regarding the seriousness of prosecutorial misconduct, *see id.* at 1267, the Hearing Board views cases of abuse of office as having limited relevance to the matter at hand because such cases involve serious breaches of public trust and significant injury. We also recognize that elected district attorneys appear to be held to an even higher standard than other prosecutors. *See id*.

[99] *Kossow*, 912 So.2d at 545.

[100] *In re Cupples*, 979 S.W.2d 932, 932-37 (Mo. 1998).

[101] *Id*. at 937; *see also Tofflemire*, 689 N.W.2d at 86-89, 95 (imposing indefinite suspension with no possibility of reinstatement for two years where a full-time state agency lawyer who was permitted to engage in outside work was found to have improperly taken sick leave from the agency while claiming to do other work, to have billed substantial hours for another position on days she claimed to have worked eight to ten hours for the agency, and to have "conducted herself with a significant and reckless disregard for the accuracy and truthfulness of her billing and timekeeping records").

[102] *Attorney Grievance Comm'n v. Floyd*, 929 A.2d 61, 62, 74 (Md. 2007). Cases involving non-workplace deceit by lawyers who were not prosecutors include *In re Wyllie*, 957 P.2d 1222, 1223-27 (Or. 1998) (imposing a two-year suspension on a lawyer who submitted an affidavit falsely attesting to completing continuing legal education and advanced a fabricated story during the ensuing disciplinary investigation); *In re Betts*, 217 P.3d 30, 31-35 (Kan. 2009) (publicly censuring a lawyer who gave his wife a falsified automobile insurance card that was discovered when she was stopped for speeding); and *People v. Small*, 962 P.2d 258, 259-61 (Colo. 1998) (publicly censuring a lawyer for falsely testifying about his insurance status during a personal small claims case).

As the foregoing analysis indicates, we have been unable to identify any cases that are truly on all fours with the instant matter. More so than for the category of cases involving, for instance, knowing conversion of client property, we find it difficult to discern themes in the case law that provide consistent and clear guidance as to our application of the ABA *Standards* here. Relevant case law appears to support a sanction ranging from a wholly stayed suspension to a served suspension of a year or more.

With that in mind, we return to the guiding framework set forth above, beginning with the baseline of a six-month served suspension and adjusting that baseline sanction in consideration of aggravating and mitigating factors. As previously explained, we have found four factors in aggravation and five mitigating factors. Given these circumstances, we decide that the most fitting sanction is a suspension of six months, with three months to be served and three months to be stayed upon successful completion of a one-year period of probation, with the conditions that Respondent refrain from violating the Rules of Professional Conduct and successfully complete ethics school. We believe this sanction both follows the required framework for analysis under the ABA *Standards* and appropriately reflects the gravity of Respondent's numerous instances of dishonesty.

IV. CONCLUSION

As a deputy district attorney, Respondent made knowing misrepresentations to his supervisors and to another lawyer on multiple occasions. He violated his duty to exercise honesty and candor, undermining the integrity of the legal profession and the district attorney's office. His misconduct warrants a six-month suspension, with three months to be served and three months to be stayed upon successful completion of a one-year period of probation, with conditions.

V. ORDER

The Hearing Board therefore **ORDERS**:

1. **DAVID R. STEINMAN**, attorney registration number **39853**, will be **SUSPENDED FOR SIX MONTHS, WITH THREE MONTHS TO BE SERVED AND THREE MONTHS TO BE STAYED** upon completion of a **ONE-YEAR PERIOD OF PROBATION**. The suspension will take effect upon issuance of an "Order and Notice of Suspension."[103]

2. 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.

[103] 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.

3. Within fourteen days of issuance of the "Order and Notice of Suspension," Respondent **SHALL** comply with C.R.C.P. 251.28(d), requiring an attorney to file an affidavit with the PDJ setting forth pending matters and attesting, *inter alia*, to notification of clients and other state and federal jurisdictions where he is licensed.

4. The parties **MUST** file any posthearing motion **on or before Friday, January 25, 2019**. Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **on or before Friday, February 1, 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 Friday, January 25, 2019**. Any response thereto **MUST** be filed within seven days.

7. Should Respondent wish to resume practicing law in Colorado, he will be required to submit to the People, no more than twenty-eight days before the expiration of the served portion of his suspension, an affidavit complying with C.R.C.P. 2151.29(b).

8. If Respondent is reinstated to practice law in Colorado, he **MUST** successfully complete a **ONE-YEAR PERIOD OF PROBATION** subject to two conditions:

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

    b. He will successfully complete at his own expense the ethics school offered by the People during the period of probation.

HEARING BOARD MEMBERS TOOLEY and SADWITH, *concurring*:

We concur in all aspects of the opinion. We believe the sanction imposed here was determined in conformity with the required framework for analysis under the ABA *Standards*. And we agree that a six-month suspension, with three months to be served and three months to be stayed, appropriately reflects the gravity of Respondent's misconduct. We write separately, however, to address more fully Respondent's argument that prior disciplinary cases involving prosecutors, specifically *In re Attorney F.* and *In re Pautler*, warrant the imposition of a private admonition rather than a suspension.

In *In re Attorney F.*, a deputy district attorney met with a witness over a lunch break after the witness had been cross-examined by defense counsel.[104] Following redirect, the witness was asked on recross if she had met with anyone from the district attorney's office over the lunch break.[105] The witness testified falsely that she had not.[106] During an afternoon recess, the victim advocate asked Attorney F. what she was going to do about the witness's false testimony.[107] Also during the same recess, defense counsel asked Attorney F. if she had conferred with the witness over the lunch break.[108] Attorney F. falsely claimed she had not.[109] Later that evening, Attorney F. realized the seriousness of the situation and contacted her supervisors.[110] She also disclosed to defense counsel that she had in fact met with the witness over the lunch break and that the witness's testimony on that point was untrue.[111]

The hearing board concluded that Attorney F. violated Colo. RPC 8.4(c) and 8.4(d) by making a knowing misrepresentation to defense counsel.[112] Although the hearing board was leaning toward a private admonition, it imposed a public censure because it believed it was required to do so.[113] On appeal, the Colorado Supreme Court held that the hearing board erred when it concluded a public censure was mandated and remanded the case for a redetermination of the appropriate sanction.[114]

In *In re Pautler*, Deputy Sheriff Cheryl Moore was on a telephone call with William Neal, who had committed three gruesome murders, trying to convince Neal to surrender himself.[115] Over the three-and-a-half hour recorded telephone call, Neal confessed in detail to

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[104] 2012 CO 57, ¶ 3.
[105] *Id.* at ¶ 4.
[106] *Id.*
[107] *Id.* at ¶ 5.
[108] *Id.* at ¶ 6.
[109] *Id.*
[110] *Id.* at ¶ 7.
[111] *Id.*
[112] *Id.* at. ¶ 9.
[113] *Id.* at ¶ 14.
[114] *Id.* at ¶¶ 15, 22.
[115] 47 P.3d 1175, 1176-77 (Colo. 2002).

his crimes.[116] Because Neal was on a cell phone, Sheriff Moore could not determine his whereabouts, and Neal was clear he would not surrender without legal representation.[117] Chief Deputy District Attorney Mark Pautler offered to impersonate a public defender and engage Neal in conversation.[118] Pautler got on the phone call, claiming to be "Mark Palmer" from the public defender's office.[119] Pautler indicated to Neal that he was Neal's attorney, and Neal believed "Mark Palmer" to be his lawyer.[120] Neal ultimately surrendered, but Pautler made no effort to correct his misrepresentations to Neal.[121] Two weeks later, the Jefferson County deputy public defender who had assumed Neal's defense learned of Pautler's misrepresentation while listening to a recording of the telephone call.[122]

The hearing board imposed a three-month stayed suspension for Pautler's violations of Colo. RPC 8.4(c) and 4.3.[123] Pautler appealed and the Colorado Supreme Court affirmed.[124]

Respondent argues that his misrepresentations to Carrigan, Edson, and Maillaro and his misrepresentation by omission to Brauchler are less egregious than those made by Attorney F. and Pautler. This is a forceful argument. After all, Attorney F. made a false representation to defense counsel during a criminal trial. And Pautler's misrepresentations to Neal and his failure to correct those misrepresentations compromised the very integrity of the criminal justice system. But we disagree with Respondent that *In re Attorney F.* and *In re Pautler* mandate an admonition rather than a suspension for the following reasons.

First, when applying the two-step framework outlined in *In re Attorney F.*, we must initially determine the presumptive sanction and then adjust the sanction based on the aggravating and mitigating factors presented.[125] We do not use as our starting point the discipline imposed in other cases. Our approach here not only comports with the two-step framework mandated by *In re Attorney F.*, it also respects the Colorado Supreme Court's observation that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[126]

Second, even though we agree with Respondent that each of his misrepresentations is less egregious than those of Attorney F. or Pautler, each case must be judged on its own merits, considering the totality of the facts and circumstances each case presents. In *In re Attorney F.*, for example, the deputy district attorney made a single misrepresentation to

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[116] *Id.* at 1177.
[117] *Id.*
[118] *Id.*
[119] *Id.*
[120] *Id.* at 1177-78.
[121] *Id.* at 1178.
[122] *Id.*
[123] *Id.*
[124] *Id.* at 1184.
[125] *In re Attorney F.*, ¶ 19.
[126] *Id.* at ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

defense counsel during trial. Here, Respondent made repeated misrepresentations over several months to his supervisors and to Carrigan. Attorney F. also disclosed her wrongful conduct within twenty-four hours, while trial was still ongoing, ensuring the trial court could give a curative instruction, which it did.[127] Conversely, Respondent knowingly engaged in a pattern of deception and failed to admit his wrongdoing to his supervisors and Brauchler until Respondent's employment termination meeting. Put simply, while the sanction in *In re Attorney F.* was appropriate based on the facts of that case, we do not believe such a sanction would be appropriate here.

As for *In re Pautler*, the facts there bear no resemblance to the facts here. The Colorado Supreme Court recognized that the reasons behind Pautler's conduct (namely, having a confessed murderer surrender without further bloodshed) were "not inconsequential."[128] Pautler's misrepresentations were not the result of a selfish motive and occurred during a single telephone call.[129] *In re Pautler* also involved matters of first impression, namely whether allegations of ethical misconduct should be subject to an imminent public harm exception or the defenses of duress and choice of evils.[130]

In summary, we believe the sanction imposed here is entirely fair, reasonable, and faithful to the ABA *Standards*. If we have any reservation at all (and we do), it is not about the appropriateness of the sanction here, but the adequacy of the sanction in *In re Pautler*, which we believe unduly depreciated the seriousness of Pautler's misconduct. That said, we neither discount nor ignore *In re Pautler*. Instead, we recognize that it is one of many cases within the broad fabric of disciplinary decisions that inform our deliberations as to the appropriate sanction to be imposed here.

We concur.

[127] *Id*. at ¶ 8.
[128] 47 P.3d at 1181.
[129] *Id*. at 1184.
[130] *Id*. at 1180-81.

DATED THIS 11th DAY OF JANUARY, 2019.

[original signature on file]

_____

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

[original signature on file]

_____

JOHN A. SADWITH
HEARING BOARD MEMBER

[original signature on file]

_____

PATRICK D. TOOLEY
HEARING BOARD MEMBER

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