

People v. Jeffrey Steven Vail. 23PDJ069. May 10, 2024.

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Jeffrey Steven Vail (attorney registration number 36639). The disbarment takes effect on June 14, 2024.

In 2018, a client hired a law firm to file a lawsuit related to the client's purchase of a jet aircraft, which the client claimed was not airworthy. At the time, Vail worked for the firm. The firm filed a complaint in 2019. Vail left the law firm in August 2020, and the client followed Vail to Vail's own law practice. Thereafter, Vail failed to act with diligence and failed to communicate with his client. In January 2021, Vail emailed the client a link to the case file and informed the client that due to medical reasons, he was no longer able to practice law and would no longer be licensed to practice law. The email also noted that Vail's firm was permanently closed and that different counsel would need to handle the client's case. Thereafter, Vail failed to take required steps when terminating the representation, failed to respond to and comply with court orders to withdraw from the case, and failed to respond to reasonable requests for information from the disciplinary authorities. Because the client could not find another lawyer to take his case, he was forced to drop his lawsuit and stipulate to a motion to dismiss the matter with prejudice.

Vail's conduct violated Colo. RPC 1.3 (a lawyer must act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a)(4) (a lawyer must promptly comply with reasonable requests for information); Colo. RPC 1.16(c) (a lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation); Colo. RPC 3.4(c) (a lawyer may 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); Colo. RPC 8.1(b) (a lawyer must not knowingly fail to respond to a disciplinary authority's lawful demand for information in connection with a disciplinary matter); and Colo. RPC 8.4(d) (it is professional misconduct to engage in conduct that is prejudicial to the administration of justice).

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: JEFFREY STEVEN VAIL, #40055	Case Number: 23PDJ069
OPINION IMPOSING SANCTIONS UNDER C.R.C.P. 242.31(b)	

In a client matter, Jeffrey Steven Vail ("Respondent") failed to act with diligence, failed to communicate with his client, failed to take required steps when terminating the representation, failed to respond to and comply with court orders, and failed to respond to reasonable requests for information from the People. Respondent also failed to participate in this disciplinary proceeding. Because Respondent abandoned his client and his law practice, the appropriate sanction in this matter is disbarment.

I. PROCEDURAL HISTORY

On November 21, 2023, Jody M. McGuirk, Office of Attorney Regulation Counsel ("the People"), filed a citation and complaint in this matter with the Presiding Disciplinary Judge ("the Court") and sent copies via first-class mail to Respondent at his registered, last-known address and to his registered email address. The People filed a "Proof of Service of Complaint and Citation" on December 5, 2023. When the due date for Respondent's answer passed, the People sent him a letter on December 19, 2023, reminding him to answer.

The People filed a "Motion for Default Pursuant to C.R.C.P. 242.27" on January 12, 2024. Four days later, the Court ordered Respondent to respond to the People's default motion. Respondent did not do so. As a result, the Court entered default on February 6, 2024, deeming admitted the facts and rule violations set forth in the complaint. The Court then issued a "Notice of Remote Sanctions Hearing Under C.R.C.P. 242.27(c)" on February 15, 2024. In that order, the Court notified Respondent that he had the right to attend the sanctions hearing, to be represented by counsel at his own expense, to cross-examine witnesses, and to present argument and evidence about the appropriate sanction.

On March 22, 2024, the Court held the sanctions hearing via the Zoom videoconferencing platform under C.R.C.P. 242.27(b) and 242.30. McGuirk represented the People; Respondent did not appear. During the hearing, the Court heard testimony from Martin Gallan. No exhibits were introduced into evidence.

II. ESTABLISHED FACTS AND RULE VIOLATIONS

The Court adopts and incorporates by reference the facts the case, as fully detailed in the complaint. Respondent was admitted to the practice of law in Colorado on October 27, 2008, under attorney registration number 40055. He is thus subject to the jurisdiction of the Colorado Supreme Court and the Court in this disciplinary proceeding.

In 2018, Martin Gallan hired Godfrey Johnson P.C. to file a lawsuit related to Gallan's purchase of a jet aircraft. Gallan claimed the jet was not airworthy. At the time, Respondent worked for Godfrey Johnson. On October 24, 2019, Godfrey Johnson filed a complaint against Bloom Business Jets, LLC, Bloom Business Jets, Inc., Brad Rose, and Rose Law, LLC on Gallan's behalf (*Gallan v. Bloom Business Jets, LLC et al.*, case number 2019CV3050 in U.S. District Court in the District of Colorado in Denver).

Respondent left Godfrey Johnson and formed his own firm, Vail Law, LLC in August 2020. Gallan followed Respondent to Vail Law. Gallan signed a contingency fee agreement with Respondent when he switched to Respondent's firm.

Respondent appeared at a scheduling hearing in the case on September 2, 2020, where the following dates were set: a joint status report was due by November 20, 2020; discovery cut-off was March 1, 2021; dispositive motions were due April 2, 2021; and a final pretrial conference was scheduled for June 8, 2021.

Gallan emailed Respondent requesting status updates on September 11, 2020; October 20, 2020; December 5, 2020; December 8, 2020; and December 9, 2020. Respondent did not respond to Gallan's emails. The joint status report that was due on November 20, 2020, was not filed.

On December 10, 2020, Gallan requested his file from Respondent by email so that Gallan could search for another lawyer. Respondent replied by email on December 14, 2020. He apologized and asked for another chance. Gallan agreed to allow Respondent to continue working on the case.

On January 31, 2021, Respondent emailed Gallan a Dropbox link to the case file and informed Gallan that due to medical reasons, he was no longer able to practice law and would no longer be licensed to practice law, "effective immediately."¹ The email also noted that Vail Law was permanently closed and that Gallan's case would need to be handled by different counsel.

¹ Compl. ¶ 15.

But Respondent did not move to withdraw from Gallan's case or inform opposing counsel that he was withdrawing from Gallan's case.

On April 1, 2021, the defendants in Gallan's lawsuit moved for summary judgment. Respondent did not file a dispositive motion or respond to the summary judgment motion on Gallan's behalf. Gallan was unable to find another lawyer to handle his matter. So, on April 15, 2021, he sought pro se an extension of time, requesting until May 10, 2021, to find another lawyer. The court granted his request.

Gallan was still unable to find another lawyer to represent him. On May 3, 2021, Gallan filed a motion for a hearing pro se, which the court granted on May 26, 2021. The court set a telephone conference for June 21, 2021, to discuss Gallan's concerns and his request to terminate his counsel. The court vacated the original pretrial conference, which had been set for June 8, 2021.

At the conference on June 21, 2021, the court gave Gallan until July 6, 2021, to find new counsel, and it set a new status conference for July 9, 2021. The court also issued to Respondent an order to show cause, directing him to respond in writing why it should not impose sanctions on him for failing to appear at the telephone conference that day and for failing to withdraw from Gallan's case. Respondent knew of, but did not respond to, the order to show cause.

Meanwhile, the Colorado Supreme Court administratively suspended Respondent's law license on July 1, 2021, due to his failure to pay his mandatory 2021 attorney registration fee.

On June 29, 2021, the court entered an advisory notice that stated Respondent was not in good standing with the Colorado Supreme Court, as he had not paid his registration fees. The court also ordered Respondent to immediately file a motion to withdraw. Respondent knew of, but did not respond to, that order. Nor did he file a motion to withdraw from Gallan's case.

Because Gallan could not find another lawyer to take his case, he decided to drop his lawsuit. On July 9, 2021, the parties filed a stipulated motion to dismiss the matter with prejudice. The court granted the motion on July 12, 2021.

Respondent has not responded to any communication from the People, despite their multiple requests for information.

Through this conduct, Respondent violated:

- Colo. RPC 1.3, which requires a lawyer to act with reasonable diligence and promptness in representing a client, by failing to diligently represent Gallan in his lawsuit, failing to file a response to the defendants' dispositive motion, and failing to withdraw.
- Colo. RPC 1.4(a)(4), which requires that a lawyer promptly comply with reasonable requests for information, when he did not respond to Gallan's requests for information

dated September 11, 2020; October 20, 2020; December 5, 2020; December 8, 2020; and December 9, 2020.

- Colo. RPC 1.16(c), which states in pertinent part that “[a] lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation.” Respondent violated this rule because he did not file a notice or motion to withdraw in Gallan’s case after notifying Gallan in January 2021 that he would not continue the representation. Nor did Respondent move to withdraw after the court ordered him to withdraw in June 2021.
- Colo. RPC 3.4(c), which provides that a lawyer may 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 3.4(c) by knowingly failing to respond to the court’s show cause order of June 21, 2021, and by knowingly failing to comply with the court’s order issued June 29, 2021, which directed him to withdraw from Gallan’s case.
- Colo. RPC 8.1(b), which provides that a lawyer must not knowingly fail to respond to a disciplinary authority’s lawful demand for information in connection with a disciplinary matter. Respondent violated this rule when he did not respond to the People’s repeated requests for information.
- Colo. RPC 8.4(d), which provides that it is professional misconduct to engage in conduct that is prejudicial to the administration of justice. Respondent’s failure to file a notice or motion to withdraw in Gallan’s matter forced the court to issue additional orders and extended the litigation, thereby prejudicing the administration of justice.

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 deciding on a sanction after finding lawyer misconduct, the Court must consider the duty the lawyer violated, the lawyer’s mental state, and the actual or potential injury the lawyer’s misconduct caused. These three variables yield a presumptive sanction that the Court may then adjust based on aggravating and mitigating factors.

ABA Standard 3.0 – Duty, Mental State, and Injury

Duty. Respondent violated the duties of communication and diligence that he owed to his client; he also violated duties he owed to the legal system and to the profession.

² Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).

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

Mental State. Respondent acted knowingly when he engaged in misconduct in Gallan's matter.

Injury. Respondent caused his client, Gallan, potentially significant injury. Gallan testified that he purchased an aircraft for \$800,000.00 but the aircraft was not airworthy. Through his lawsuit, Gallan sought to recover that amount or more from multiple defendants. When communication with Respondent ceased, Gallan felt "abandoned" by Respondent. Equally grievous, Gallan could not find another lawyer to take his case, which Gallan partly attributed to Respondent's failure to withdraw from the matter. Gallan believed he stood to recoup over one million dollars in what he saw was a "good case," but Respondent's actions deprived Gallan of his opportunity to present that case. Gallan stated that Respondent's misconduct degraded his opinion not only of lawyers but also of Coloradans. The Court thus concludes that Respondent caused Gallan potentially serious injury; that Respondent harmed the reputation of the legal profession; and that he caused the profession further injury by failing to cooperate with disciplinary authorities and by failing to participate in this proceeding.

ABA Standards 4.0-7.0 – Presumptive Sanction

The Court considers *ABA Standard 4.41*, which calls for disbarment when a lawyer abandons the practice and causes a client serious or potentially serious injury; when a lawyer knowingly fails to perform services for a client and causes that client serious or potentially serious injury; or when a lawyer engages in a pattern of neglect with respect to client matters, seriously or potentially seriously injuring a client. Here, the Court finds that Respondent knowingly failed to perform services for Gallan, abandoning both Gallan and the practice of law and potentially seriously injuring Gallan's legal rights.

For Respondent's failure to cooperate with disciplinary authorities, the Court looks to *ABA Standard 7.2*, which addresses violations of professional duties. *ABA Standard 7.2* calls for suspension when a lawyer knowingly engages in conduct that violates a duty owed as a professional, thereby injuring or potentially injuring a client, the public, or the legal system.

Nevertheless, the Court finds that the presumptive sanction in this matter is disbarment. This is so because the ultimate sanction should be at least consistent with, and generally greater than, the sanction for the most serious disciplinary violation when cases involve multiple types of lawyer misconduct.⁴

ABA Standard 9.0 – Aggravating and Mitigating Factors

Aggravating factors include any considerations that justify an increase in the degree of the sanction to be imposed, while mitigating factors warrant a reduction in the severity of the

⁴ *ABA Annotated Standards* Preface at xx.

sanction.⁵ The People advance for the Court’s consideration four aggravating factors: multiple offenses, Respondent’s bad faith obstruction of the disciplinary proceeding, a refusal to acknowledge the wrongful nature of his misconduct, and a lack of remorse.⁶ The Court applies three of these factors—multiple offenses, Respondent’s bad faith obstruction of the disciplinary proceeding, and a refusal to acknowledge the wrongful nature of his conduct—giving more weight to the latter factor.⁷ The Court is aware of just one applicable mitigating factor: absence of prior discipline.⁸

Analysis Under ABA *Standards* and Case Law

The Court heeds the Colorado Supreme Court’s directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,⁹ mindful that “individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases.”¹⁰ Though prior cases can inform through analogy and act as touchpoints in an effort to achieve consistency, the Court is charged with determining the appropriate sanction for a lawyer’s misconduct on a case-by-case basis.¹¹

The People recognize that at least one ABA *Standard* presumptively calls for disbarment. They also ask the Court to apply several aggravating factors but just one mitigating factor. Even so, they seek a three-year suspension, arguing that Respondent committed misconduct in only one client matter.¹² The People support their position with several Colorado Supreme Court cases that predate our current disciplinary system and that do not explicitly select ABA *Standard* 4.41 when setting a presumptive sanction.

⁵ See ABA *Standards* 9.21 and 9.31.

⁶ Though the People ask the Court to apply an aggravating factor of lack of remorse, that concept is encompassed by ABA *Standard* 9.22(g)—refusal to acknowledge the wrongful nature of the conduct—and thus should not be considered as a separate factor. See ABA *Annotated Standards* at 472.

⁷ ABA *Standards* 9.22(d), (e), and (g). The Court notes that in its discretion it chooses to apply ABA *Standard* 9.22(e), bad faith obstruction of the disciplinary proceeding, to address Respondent’s failure to participate in this formal proceeding, whereas it views the People’s Colo. RPC 8.1(b) claim as focused on Respondent’s failure to cooperate with their investigation.

⁸ ABA *Standard* 9.32(a).

⁹ See *In re Attorney F.*, 2012 CO 57, ¶ 20; see also *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).

¹⁰ *Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

¹¹ *Id.* ¶ 15; see also *In re Olsen*, 2014 CO 42, ¶ 26 (noting that a presumptive sanction may be increased or decreased in light of past disciplinary decisions).

¹² The People conceded in their closing argument, however, that disbarment would also be an appropriate outcome.

In *People v. Odom*, for instance, a lawyer who abandoned two different clients and failed to participate in the disciplinary process was suspended for three years.¹³ There, the Colorado Supreme Court recited the elements of ABA *Standards* 4.41 and 4.42 but did not designate one of the *Standards* as setting a presumptive sanction. Instead, the *Odom* court remarked that the disposition of prior cases would “sustain either a long period of suspension or disbarment,” but it ultimately elected to follow the recommendations of the hearing panel and to suspend, rather than disbar, the lawyer.¹⁴ Likewise, in *In re Demaray*, a lawyer who abandoned a client in a criminal case and failed to participate in the disciplinary process was sanctioned with a three-year suspension.¹⁵ As in *Odom*, the *Demaray* court looked to both ABA *Standards* 4.41 and 4.42 yet declined to explicitly choose one *Standard* to anchor the presumptive sanction. Rather, *Demaray* cited *Odom* and deferred to the board’s and the panel’s recommendation of a three-year suspension.¹⁶

Here, the Court begins its analysis with the presumptive sanction of disbarment, which sets it apart from the People’s cited cases. The aggravating factors here outweigh the mitigating factors; this imbalance does nothing to move the needle away from a sanction of disbarment. Within that context, the Court considers recent relevant cases that likewise start with a presumption of disbarment under ABA *Standard* 4.41. In *People v. Sarpong*, this Court disbarred a lawyer in a default sanctions hearing for neglecting three client matters and failing to cooperate with disciplinary authorities.¹⁷ In *People v. Atencio*, a case in which the lawyer also failed to cooperate and defaulted in his discipline case, the Court disbarred a lawyer for abandoning clients in three separate matters.¹⁸ Assessing the totality of the circumstances here, including Respondent’s abandonment of his law practice and Gallan’s case, the significant potential injury that Gallan experienced as a result, and Respondent’s failure to cooperate with the People, the Court concludes that Respondent’s disbarment is consistent with prior cases and is justified here.

IV. CONCLUSION

Respondent abandoned his law practice and his client, causing the client significant potential injury. Respondent also failed to participate in this process, seemingly abandoning his law license as well. As a result, the appropriate sanction is disbarment.

¹³ 914 P.2d 342, 343 (Colo. 1996).

¹⁴ *Id.* at 345.

¹⁵ 8 P.3d 427, 428 (Colo. 1999).

¹⁶ *Id.*; see also *People v. Shock*, 970 P.2d 966, 966 (Colo. 1999) (same).

¹⁷ 470 P.3d 1075, 1082 (Colo. O.P.D.J. 2017).

¹⁸ 470 P.3d 1090, 1095 (Colo. O.P.D.J. 2017).

V. ORDER

The Court **ORDERS**:

1. **JEFFREY STEVEN VAIL**, attorney registration number **40055**, is **DISBARRED** from the practice of law in Colorado. The disbarment will take effect upon issuance of an "Order and Notice of Disbarment."¹⁹
2. To the extent applicable, Respondent **MUST** promptly comply with C.R.C.P. 242.32(b)-(e), concerning winding up of affairs, notice to current clients, duties owed in litigation matters, and notice to other jurisdictions where he is licensed or otherwise authorized to practice law.
3. Within fourteen days of issuance of the "Order and Notice of Disbarment," Respondent **MUST** file an affidavit with the Court under C.R.C.P. 242.32(f), attesting to his compliance with C.R.C.P. 242.32. As provided in C.R.C.P. 242.41(b)(5), lists of pending matters, lists of clients, and copies of client notices under C.R.C.P. 242.32(f) must be marked as confidential attachments and filed as separate documents from the affidavit.
4. The parties **MUST** file any posthearing motions **no later than Friday, May 24, 2024**. Any response thereto **MUST** be filed within seven days.
5. The parties **MUST** file any application for stay pending appeal **no later than the date on which the notice of appeal is due**. Any response thereto **MUST** be filed within seven days.
6. Respondent **MUST** pay the costs of this proceeding. The People **MUST** submit a statement of costs **no later than Friday, May 24, 2024**. Any response challenging the reasonableness of those costs **MUST** be filed within seven days thereafter.



DATED THIS 10th DAY OF MAY, 2024.

A blue ink signature of Bryon M. Large, written in a cursive style.

BRYON M. LARGE
PRESIDING DISCIPLINARY JUDGE

¹⁹ In general, an order and notice of sanction will issue thirty-five days after a decision is entered under C.R.C.P. 242.31(a)(6). In some instances, the order and notice may issue later than the thirty-five days by operation of C.R.C.P. 242.35, C.R.C.P. 59, or other applicable rules.