

**COLORADO SUPREME COURT OFFICE OF PRESIDING DISCIPLINARY
JUDGE HEARING BOARD**

People v. Head

332 P.3d 117 (Colo. O.P.D.J. 2013) · Decided July 31, 2013

SUMMARY

A Colorado attorney-discipline Hearing Board decision concerning an attorney's conduct during proceedings to collect an attorney-fee judgment. The Board found that the respondent knowingly made misrepresentations concerning tax returns and violated Colo. RPC 8.4(c), along with other professional-conduct rules discussed in the decision. It concluded that the appropriate sanction was suspension for one year and one day.

CASE DETAILS

COURT	Colorado Supreme Court Office of Presiding Disciplinary Judge Hearing Board
JURISDICTION	Colorado
DECIDED	July 31, 2013
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding in which the People charged Respondent with multiple violations of the Colorado Rules of Professional Conduct. After a disciplinary hearing and denial of Respondent's motion for a directed verdict, the Hearing Board determined that several violations were proved and imposed a suspension.
STANDARD OF REVIEW	The People bore the burden of proving the charged violations by clear and convincing evidence. For the directed-verdict motion, the Presiding Disciplinary Judge viewed the evidence in the light most favorable to the People.
PRECEDENTIAL VALUE	Published disciplinary opinion; precedential value is limited to the extent specified by Colorado disciplinary authority and reporter publication practices.
PARTIES	The People v. John Frederic Head

TOPICS

sanctions

civil procedure

commercial litigation

consumer protection

attorney fees

PRACTICE AREAS

legal ethics and attorney discipline

civil procedure

judgment enforcement

professional responsibility

QUESTIONS PRESENTED

1. Whether Respondent's misrepresentations in postjudgment proceedings violated Colo. RPC 3.3(a)(1) when he was representing his own interests rather than a client.
2. Whether Respondent's misrepresentations to the court and opposing counsel constituted knowing dishonesty, fraud, deceit, or misrepresentation under Colo. RPC 8.4(c).
3. Whether Respondent unlawfully obstructed access to evidence by concealing or misrepresenting the location and existence of tax returns and financial information in violation of Colo. RPC 3.4(a).
4. Whether Respondent knowingly disobeyed a garnishment writ and court orders in violation of Colo. RPC 3.4(c), and whether that conduct prejudiced the administration of justice under Colo. RPC 8.4(d).
5. What sanction was appropriate for the proved misconduct.

HOLDINGS

1. Colo. RPC 3.3(a)(1) does not apply to an attorney's statements in proceedings in which the attorney represents the attorney's own interests rather than a client.
2. Respondent knowingly violated Colo. RPC 8.4(c) by repeatedly misrepresenting the existence and location of his 2006 and 2007 tax returns and by making false statements about his income and financial obligations.
3. Respondent violated Colo. RPC 3.4(a) by unlawfully obstructing the defendants' access to evidence concerning his financial status.
4. Respondent violated Colo. RPC 3.4(c) by knowingly failing to comply with the H&A garnishment writ and court orders directing payment of the judgment, and violated Colo. RPC 8.4(d) because the conduct prejudiced the administration of justice.
5. A suspension of one year and one day was appropriate for Respondent's knowing misrepresentations, obstruction of evidence, disobedience of court orders, and resulting prejudice to the administration of justice.

KEY QUOTATIONS

"Even if Respondent believed that the court's orders and findings were invalid, he was not free to ignore them. His proper remedy was to appeal those rulings." (132)

"Through this conduct, Respondent prejudiced the administration of justice." (133)

"Respondent knowingly made misrepresentations to the court and to opposing counsel, causing substantial confusion and delay, and he failed to abide by court orders." (136)

FACTUAL BACKGROUND

Respondent, a Colorado attorney and sole shareholder of Head and Associates, became jointly and severally liable with his clients for approximately \$36,830 in attorney's fees after their Colorado Consumer Protection Act claims were dismissed. During the resulting collection proceedings, Respondent failed to provide complete information about retained earnings and firm assets, delayed or failed to comply with interrogatories and garnishment-related obligations, and repeatedly represented that his 2006 and 2007 tax returns existed in storage even though they had not been filed until 2010. He also failed to make payments toward the judgment while directing substantial retained-earnings distributions to himself.

PROCEDURAL HISTORY

The People filed a disciplinary complaint, and the Presiding Disciplinary Judge set the matter for hearing. The Hearing Board heard testimony and considered stipulated and admitted exhibits. It found that Respondent knowingly made misrepresentations to the court and opposing counsel, obstructed access to evidence, and disobeyed a garnishment writ and court orders, but it rejected or found unproved several other alleged violations. The Board imposed a suspension of one year and one day and assessed proceeding costs.

DISPOSITION

other

CASES CITED

- Vikman v. Int'l Bhd. of Elec. Workers, Local Union No. 1269, 889 P.2d 646, 654 (Colo. 1995)
- Iowa Supreme Court Attorney Disciplinary Bd. v. Rhinehart, 827 N.W.2d 169, 176-77 (Iowa 2013)
- State ex rel. Okla. Bar Ass'n v. Dobbs, 94 P.3d 31, 52 (Okla. 2004)
- In re Roose, 69 P.3d 43, 49 (Colo. 2003)
- In re Fisher, 202 P.3d 1186, 1203 (Colo. 2009)
- In re Hugen, 973 P.2d 1267, 1268 (Colo. 1999)
- Attorney Grievance Comm'n of Md. v. Levin, 432 Md. 429, 69 A.3d 451, 463-64 (2013)
- In re Disciplinary Matter Involving Ford, 128 P.3d 178, 181 (Alaska 2006)
- People v. Johnson, 944 P.2d 524, 527 (Colo. 1997)
- People v. Murray, 887 P.2d 1016, 1020 (Colo. 1994)
- In re Attorney F., 285 P.3d 322, 327 (Colo. 2012)
- In re Fischer, 89 P.3d 817, 822 (Colo. 2004)
- People v. Kolbjornsen, 917 P.2d 277, 279 (Colo. 1996)
- People v. Koller, 873 P.2d 761, 763 (Colo. 1994)
- People v. Reed, 942 P.2d 1204, 1206 (Colo. 1997)
- People v. Rader, 822 P.2d 950, 954 (Colo. 1992)
- People v. Kearns, 843 P.2d 1, 5 (Colo. 1992)
- People v. Phelps, 837 P.2d 755, 759 (Colo. 1992)

- People v. Sather, 936 P.2d 576, 579 (Colo. 1997)
- In re Reardon, 759 A.2d 568, 577 (Del. 2000)
- People v. Rosen, 198 P.3d 116, 121 (Colo. 2008)

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