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:** YUJIN CHOI, #53449	Case Number: **24PDJ019**
OPINION IMPOSING SANCTIONS UNDER C.R.C.P. 242.31	

SUMMARY

In October 2022, Yujin Choi ("Respondent") intentionally acted to harm a coworker by fabricating text messages designed to make it appear that the coworker was harassing her. She doubled down on that deceit during her employer's investigation into the messages by intentionally altering evidence. To maintain the ruse, she purposefully ruined her own phone and laptop to prevent her employer from forensically examining the devices, spinning a false narrative about their accidental destruction. Through this misconduct, she violated Colo. RPC 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and Colo. RPC 8.4(h) (it is professional misconduct for a lawyer to engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on the lawyer's fitness to practice law). Respondent's misconduct warrants her disbarment.

I. PROCEDURAL HISTORY

Respondent was admitted to the practice of law in Colorado on May 22, 2019, under attorney registration number 53449.[1] She is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[2]

On behalf of the Office of Attorney Regulation Counsel ("the People"), Jody M. McGuirk filed with Presiding Disciplinary Judge Bryon M. Large ("the PDJ") a three-claim complaint in this case on March 11, 2024, alleging that Respondent violated Colo. RPC 8.4(c) (Claim I);

[1] Stip. Facts ¶ 1.
[2] C.R.C.P. 242.1(a).

Colo. RPC 8.4(d) (Claim II); and Colo. RPC 8.4(h) (Claim III).[3] Respondent answered on April 8, 2024. The parties then set a five-day hearing to take place from November 4-8, 2024.

Nicole M. Black entered a limited appearance on Respondent's behalf on June 25, 2024. Black and Aidan T. O'Neil later formally entered their appearances for Respondent on August 1, 2024. Soon thereafter, Respondent informally sought to continue the hearing, but the PDJ denied that request. On October 3, 2024, the PDJ granted the People's "Unopposed Amended Motion to Dismiss Claim II of the Complaint with Prejudice" and dismissed Claim II.

On October 21, 2024, the PDJ held a motions hearing on the People's "Motion in Limine to Preclude Expert Testimony of Meredith L. McDonald, Esq., Pursuant to C.R.E. 403, 608, and 702." At that hearing, the PDJ orally granted the People's motion to exclude McDonald's expert opinion on one proposed opinion (Opinion B); denied the People's motion to exclude McDonald's rebuttal expert opinion, if the People opened the door to the issue (Opinion C); and reserved judgment as to the remainder of McDonald's proposed testimony (Opinion A).

After extending the parties' deadlines to file and respond to dispositive motions, the PDJ issued on October 30, 2024, an "Order Deciding Respondent's Motion to Determine a Question of Law Under C.R.C.P. 56(h) and Denying Respondent's Motion for Summary Judgment Under C.R.C.P. 56." In that order, the PDJ determined that *Garrity v. New Jersey* is neither applicable nor relevant in disciplinary proceedings.[4] As such, the PDJ refused to suppress evidence allegedly collected in violation of *Garrity*. The PDJ also concluded that Respondent was not entitled to summary judgment on any claim, as material issues of disputed fact precluded the PDJ from disposing of the claims as a matter of law. Also on October 30, 2024, the PDJ granted the People's motion to preclude McDonald from offering Opinion A at the upcoming hearing in its "Order Granting in Part Motion in Limine to Preclude Expert Testimony Regarding Opinion of Meredith L. McDonald, Esq., Under CRE 403 and 702." Finally, on November 1, 2024, the PDJ denied in part and reserved judgment in part as to Respondent's omnibus motion in limine.

The weekend before the hearing, Respondent filed "Respondent Yujin Choi, Esq.'s Forthwith Motion for Continuance of Disciplinary Hearing or in the Alternative, Motion to Stay Pending Appeal" as well as "Respondent Yujin Choi, Esq.'s Forthwith Motion to Certify Orders for Interlocutory Appeal Under C.A.R. 4.2." She also submitted "Respondent Yujin Choi's Unopposed Motion for Entry of Protective Order with Respect to Non-Stipulated Respondent's Exhibits AAA-EEE."

The morning of the first day of the hearing—November 4, 2024—the PDJ took up, outside the presence of the other Hearing Board members, the motions Respondent had filed over the

[3] Justin P. Moore later entered his appearance as co-counsel on the People's behalf.

[4] 385 U.S. 493, 566 (1966) (holding that "the protecting of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or members of our body politic").

weekend. After hearing the parties' arguments, the PDJ denied Respondent's motion to certify an interlocutory appeal under C.A.R. 4.2, denied Respondent's motion to stay the case pending her appeal, and granted her motion for a protective order. With the People's acquiescence and the PDJ's permission, Respondent then registered both orally and in writing a standing objection to certain topics.

From November 4-8, 2024, a Hearing Board comprising the PDJ, lawyer Elizabeth Wald, and citizen member Dr. Robert Munson held a hearing under C.R.C.P. 242.30.[5] McGuirk and Moore attended for the People, and Black and O'Neil represented Respondent. The Hearing Board received remote testimony via Zoom from Mary Krenzen and Elizabeth Wynn, who was qualified as an expert in mental health counseling. The Hearing Board heard in-person testimony from Respondent, Daniel Cohen, Zachary McCabe, Liza Willis, Danielle Robinson, Daniel Hines, Timothy Garner, who was qualified as an expert in digital forensic investigations, and Adam Bechthold, who was qualified as an expert in cell phone and computer forensics. The PDJ admitted the People's exhibits 1-6, 8-15, 18-19, and 21.[6]

II. FINDINGS OF FACT

Background

Respondent, who was born in South Korea, immigrated to the United States with her parents and her brother when she was ten years old. She enjoyed a tight-knit familial relationship, where family was the priority. Growing up, though, she felt her opinions were not valued. She was drawn to law to advocate for the voiceless and to explore her interest in criminal psychology.

After earning a college degree, Respondent enrolled at the University of Denver Sturm College of Law. While a law student, she interned for Judge Morris Hoffman, the Attorney General's Office's Criminal Justice Section, and the Denver District Attorney's Office (the "DA's Office") in its Family Violence Unit ("FVU"). She graduated from law school in December 2018 and joined the DA's Office in May 2019.[7]

Though Respondent was initially hired as a county court prosecutor, she enjoyed a rapid ascent through the ranks of the DA's Office: she was promoted to the Behavioral Health Unit in March 2020, elevated to a felony district court docket in December 2020, and finally moved in

[5] The last day of the hearing—November 8, 2024—took place remotely via the Zoom videoconferencing platform due to inclement weather.

[6] Ex. 6 is Garner's investigative report. We decline to give the report any weight and instead rest our findings on Garner's detailed recounting of events during his testimony.

[7] At some point during her first year of employment, Respondent was provided with a copy of the DA's Office's Employee Handbook. Stip. Facts ¶ 3.

March 2022 to the FVU, which she viewed as an "elite unit." As a deputy district attorney with the FVU, she handled felony-level domestic violence and child abuse cases.[8]

Respondent's job as a prosecutor was her life. She worked "constantly," she said, and her social network consisted mostly of her coworkers. "Family was the reason why I worked so hard," she said. As she explained, her prosecutorial role was a source of pride for her parents, perhaps because it signified that they had accessed a little bit of the American dream. But Respondent felt that being one of the only female Asian-American prosecutors in the state was isolating and wearing. She befriended and confided in Bilal Aziz, another Asian-American prosecutor who had immigrated to the United States with his family, and together they commiserated about the challenges inherent in their shared situation.

Respondent testified that in June 2021, Daniel Hines, an investigator in the DA's Office, made a comment to her that she considered harassing and upsetting. She told a coworker about the comment but declined to name Hines as the alleged perpetrator. The coworker, in turn, made an outcry to the DA's Office's leadership (hereinafter the "Front Office"). Liza Willis, the DA's Office's Chief of Staff, contacted Respondent, who confirmed the statement but refused to identify the aggressor and insisted that she did not want any action taken. But Willis, who felt obligated to do something, organized a special all-office assembly to address topics including harassment and implicit bias. Respondent testified that on July 12, 2021, two days before the training, Hines sent her a text message, which she also believed constituted harassment. At the time of that training, no one knew, except for Aziz, that it was Hines who had allegedly made these remarks.

In August 2021, Respondent lodged an official complaint with the Front Office about the comment she alleged Hines made in June 2021. According to Respondent, she filed the formal report because she learned that Hines was assigned to a sister courtroom and would be working near her every day. To the Front Office she reiterated that she did not want to pursue any disciplinary action against Hines; she merely wanted to ensure that she would not work with or near him. She asked Willis, she said, to reassign Hines's courtroom and to move his office. Respondent testified that her wishes were eventually honored after a several-week delay in response.

Garner believed he "thoroughly" investigated this matter when Respondent reported it, which resulted in a "written reprimand to [Hines's] file stating he should be more aware of his language in the future."[9] Though Willis conceded that the Front Office "could have done more" to investigate, she also testified that the Front Office "just didn't have anything" and thus the investigation was closed as unsubstantiated. Respondent recalled being unhappy that the Front Office never directly updated her about the investigation's resolution. She also recounted that when she complained that rumors were circulating about her interactions with Hines, the Front Office told her that it could not control what people said. Respondent interpreted that statement to mean that the Front Office would not protect her from harassment.

[8] Stip. Facts ¶ 2.
[9] Ex. 18 at 7 n.1.

The Text Messages—October 14 and 15, 2022

On the evening of Friday, October 14, 2022, Respondent joined three fellow deputy district attorneys, Mary Krenzen, Dani Warly, and Meredith D'Angelo, for happy hour at the FIRE Restaurant and Lounge in downtown Denver.[10] According to Krenzen, the atmosphere was fun and the mood normal. Krenzen testified that Respondent did not drink much that night. Nor did Krenzen observe Respondent sending or receiving texts. At some point, however, Respondent left the table for a while, and Krenzen could see Respondent pacing by an elevator bank and speaking on her phone.

The same evening, Respondent was also exchanging texts with Chief Deputy District Attorney Daniel Cohen, one of her immediate supervisors in the FVU. Respondent considered Cohen a trusted mentor and a friendly coworker. At 6:27 p.m., Respondent texted Cohen, "I also wanted to share a disgusting text that I got from a person in our office."[11] Cohen asked about the text, and Respondent replied, "Ummm sex doll . . . .Retaliation? Potentially a drunk text idk."[12] Cohen promptly asked Respondent to send him the text. Respondent demurred, "Well, I can but you'd know who it is."[13]

At 6:44 p.m., Cohen called Respondent. He did so to "check in" by phone because their text communications were not sufficiently clear to help him understand the situation. According to Cohen, Respondent seemed "normal," like the person he had gotten to know. They discussed the text—though Respondent declined to name the text's sender or to send the actual content of the message—and Cohen raised the question of "next steps," including reporting options. According to Cohen, Respondent was "adamant" that she did not want to report the text to the Front Office. They spoke for about fifteen minutes.

After Respondent returned to the table, Krenzen noticed that Respondent seemed a bit quiet, reserved, and upset. Respondent told her companions that she received an inappropriate text message from Hines, and she showed everyone a text that read, "Yujin, please stop talking about what I didn't do to our colleagues. You are using your looks against innocent people. If you want to act like a sex doll to get a sugar daddy . . . fine, but that will not be me."[14] The table discussed the text at length, and Krenzen, who was seated next to Respondent, used Respondent's phone to text herself a screenshot of the message.[15] Respondent knew that Krenzen took a screenshot of the text; she did not try to prevent Krenzen from doing so.

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[10] Stip. Facts ¶ 4. Respondent considered Krenzen and Warly personal friends. Stip. Facts ¶ 4.
[11] Ex. 4 at 1. Cohen confirmed that the clock on his phone was correctly set to Mountain Standard Time that day.
[12] Ex. 4 at 2.
[13] Ex. 4 at 2.
[14] Ex. 3; Ex. 4 at 5.
[15] Stip. Facts ¶ 5.

By 7:34 p.m., Respondent was on a bus headed home.[16] At 7:37 p.m., Respondent sent Cohen a screenshot of another message. The text read, "Don t be stupid."[17] Respondent confirmed with Cohen that she had just received the text, remarking, "Yeah, I deleted the fucking first text."[18] Cohen testified that when he saw the new text, his primary concern was to ensure that Respondent was not in any immediate physical danger. He asked whether she felt unsafe. She replied, "Kinda."[19] In a four-minute back-and-forth text chat, Respondent verified that she had received two texts, and Cohen asked her not to delete any others; in response, she reported that she had screenshots. Respondent then sent screenshots of three texts allegedly sent by her harasser, which included a new text that stated, "Let's talk."[20] About twenty minutes later she added, "Turns out I can recover deleted messages."[21] Respondent testified that throughout her exchange with Cohen, she never named Hines as the texts' sender.

Respondent also sent a screenshot of the texts to two other coworkers—Daniel De Cecco and Brittany Cooper—telling them that Hines was the texts' author.

The next day, Saturday, October 15, Cohen texted Respondent mid-morning to ask how she was doing. She replied, in part, that she was about to get her "rage out" while judging a mock trial competition at the University of Denver Sturm College of Law.[22] That afternoon, she and Krenzen helped to judge the contest. During a break, Respondent went to the restroom. When she returned, she showed Krenzen a new message that she said Hines had sent at 2:07 p.m. The text read, "I'm sorry, hope you have a nice weekend."[23] Krenzen saw that the new message—under the header "Dan" with the initials "DH"— was in the same text thread as the messages from the previous night. Krenzen took a screenshot of the entire text thread[24] because, as she testified, she had "every intention of reporting [the texts] to our Front Office."

At 2:09 p.m. on October 15, Respondent shared with Cohen a screenshot of all four messages she alleged having received from Hines with the addendum, "I think I'm having a stroke."[25] Cohen replied, "Oh Jesus. That's just abuser behavior."[26] Cohen, who was "thrown off" by the apology text, thought it was "gross." He told Respondent that they should discuss next steps the following workday, Monday, October 17.

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[16] Ex. 4 at 2.
[17] Ex. 4 at 2-3.
[18] Ex. 4 at 3-4.
[19] Ex. 4 at 4.
[20] Ex. 4 at 4-5.
[21] Ex. 4 at 6.
[22] Ex. 4 at 8.
[23] Ex. 3.
[24] Ex. 3; *see also* Stip. Facts ¶ 6.
[25] Ex. 4 at 8; *see also* Stip. Facts ¶ 6.
[26] Ex. 4 at 9.

Respondent testified that all four texts were "from Dan Hines as Dan Hines was saved on [her] phone" on October 14 and 15, 2022. Because she had not had any direct contact with Hines since June 2021, she said, the texts came out of the blue.

The Front Office Investigation—the Week of October 17, 2022

During the same weekend, around October 15, 2022, Krenzen shared the screenshots she received from Respondent with her supervisor, Chief Deputy District Attorney Melissa Fox.[27] Krenzen was aware that Respondent was hesitant to report the texts. But Krenzen wanted the Front Office to take the texts seriously, particularly because Krenzen was aware of the June 2021 allegations and adjudged the Front Office's response at that time as lacking. Krenzen believed that the best practice was for her to report the texts and that Respondent "deserved better."

On the morning of Monday, October 17, Fox shared the screenshots that Krenzen had given her with Assistant District Attorney Zach McCabe.[28] McCabe soon forwarded the screenshots to Willis.[29] Then, during a Front Office meeting that morning with elected District Attorney Beth McCann, Willis, and Assistant District Attorney Maggie Conboy, McCabe raised the issue of and entrusted Willis with the responsibility for conducting an internal workplace investigation into possible sexual harassment. Willis, in turn, enlisted the DA's Office's Chief Investigator, Timothy Garner, to interview witnesses and collect evidence. Willis made clear to Garner that she wanted to personally meet with Respondent as soon as possible.

Garner spoke with Krenzen, Fox, and Cohen on October 17. Cohen told Garner about his interactions with Respondent over the weekend, and he gave Garner many of the texts he exchanged with her. Garner noticed that the screenshot of the first text—beginning with "Yujin, please stop talking about what I didn't do . . ."—displayed a time-stamp of 7:11 p.m., more than forty minutes after Respondent informed Cohen that she had received a "disgusting" text.[30] Garner also observed that the first three texts from October 14 were blue bubbles, indicating they were iMessages sent from one iPhone to another iPhone using Apple's proprietary messaging system; in contrast, the fourth text, time-stamped 2:07 p.m. on October 15, appeared as a green bubble, indicating it was an SMS text message. At the disciplinary hearing, Garner explained that if an iPhone user sends a text to another iPhone user during an internet connection disruption or hiccup, the text will transmit through the user's cellular service as an SMS text message appearing in a green bubble, rather than as a blue iMessage.[31]

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[27] Stip. Facts ¶ 7. Fox is now known by her married name, Melissa Shopneck.

[28] Stip. Facts ¶ 8; Ex. 2 at 1.

[29] Stip. Facts ¶ 9.

[30] Ex. 2 at 4.

[31] *See* Ex. 18 at 11 (noting that while SMS texts appear on cellular service providers 'message logs, "iMessage is a proprietary messaging system through Apple for users who both possess an Apple product for messaging[,] and these messages are not routed through cellphone service providers").

Meanwhile, Respondent approached Danielle Robinson, another of her supervisors and co-Chief Deputy District Attorney in the FVU. Respondent told Robinson that she had received sexually harassing texts from Hines, and she showed Robinson the texts on her phone. According to Robinson, Respondent appeared upset and concerned but did not cry during their conversation. Respondent also told Robinson about the June 2021 allegations, which she believed the Front Office handled poorly, and cited that experience as the reason she did not want to formally report the texts. Robinson resolved to support Respondent and "give [her] the power back" as to how to proceed.

Respondent had a similar conversation with Cohen the same day. Cohen testified that Respondent refused to report the messages to the Front Office because she concluded that doing so was a "hopeless endeavor," she expected to be ignored, and she feared she would ultimately receive "blowback" for even lodging a formal complaint.

Willis called Respondent on Tuesday, October 18. Willis told Respondent that she was aware of the text messages, and she requested that Respondent attend a meeting the following morning.[32] Respondent informed Willis that she did not want the matter investigated and did not wish to make a statement. Despite Respondent's hesitance, however, Willis believed she had a duty to investigate all sexual harassment allegations, and she set a meeting with Respondent and Garner for the following day.

Also on October 18, Garner approached Hines with printouts of the text messages. Hines, who was visibly upset, emphatically denied sending the texts and demanded to undergo a polygraph immediately. He also offered his iPhone to Garner for inspection. Garner did not find any of the texts on Hines's device. Hines further volunteered to provide his cell phone records. With Garner standing behind him, Hines logged on to his Verizon account and downloaded his cellular and data logs. Garner testified that the cellular records showed Hines did not send an SMS text on October 15 at 2:07 p.m.[33] Further, the data records suggested that Hines was not using data on October 14, when Respondent received the three iMessages. According to Garner, he searched Hines's records to determine if data were used to send the three iMessages, but Hines's closest data connection entries were logged on October 14 at 6:50 p.m. and 11:29 p.m.[34]

Hines also consented to have the DA's Office extract from his iPhone all messages and other underlying data on the device showing any communication between his and Respondent's numbers.[35] On Wednesday, October 19, Garner gave Hines's phone to Adam Bechthold, a digital technician with the DA's Office, to perform the extraction. Bechthold testified that the extraction of Hines's phone turned up just two relevant "artifacts": (1) Respondent's Google Duo contact information; and (2) her phone number, which Hines added to his contacts on February 21, 2020,

[32] Stip. Facts ¶ 10.

[33] Ex. 8. Hines then printed these records and color-coded each entry from the relevant timeframes based on recipient. Ex. 9.

[34] *See* Ex. 18 at 11.

[35] Ex. 10.

and which he blocked on June 18, 2022.[36] Bechthold found no evidence of any SMS texts or iMessages between Hines and Respondent.

Respondent again reached out to Robinson on the morning of Wednesday, October 19. She told Robinson that Willis had set a meeting for that day and reiterated that she did not want to participate in Willis's investigation. Robinson testified that she took a "victim-centered approach," consistent with her professional values, by volunteering to attend the meeting in Respondent's stead.[37] At the meeting, Robinson conveyed Respondent's strong desire not to pursue a formal complaint against Hines.[38] When Robinson delivered that message, Willis told Robinson that she was disappointed Respondent refused to appear, as the DA's Office was duty-bound to investigate.[39] Willis sent another calendar invite to Respondent, setting a meeting for October 20, 2022.[40]

At Respondent's behest, Robinson again contacted Willis on the morning of Thursday, October 20, 2022, to cancel the meeting scheduled for that day and to reiterate that Respondent did not want to proceed with a formal complaint against Hines.[41] To emphasize the importance of Respondent's cooperation to "get to the bottom of this," Willis disclosed to Robinson that the Front Office had already determined that the messages did not originate from Hines's cell phone. Willis expressed concern that another DA's Office employee might have sent the messages, but asked Robinson to preserve the integrity of the investigation by keeping that development confidential. Willis then rescheduled her meeting with Respondent to October 21, 2022, and indicated that the meeting was "mandatory."[42] Although Respondent did not want to attend the mandatory meeting, she felt she had to do so. According to Cohen, Respondent was angry that Willis was forcing her to discuss the matter and told Cohen that she might "rage quit."

Midday on Friday, October 21, Respondent met with Willis and Garner. During that trialogue, Respondent not only told them that Hines had sent her the four messages on October 14 and 15 but also confirmed the accuracy of the messages' timestamps as they appeared on the screenshots. Garner then examined Respondent's phone but could not locate the messages. Respondent said she must have deleted the messages; Garner tried to recover the deleted messages but was unable to do so. Garner also looked at the time setting on Respondent's phone and verified that the phone's clock matched the correct time.

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[36] Ex. 12.

[37] *See* Stip. Facts ¶ 11.

[38] *See* Stip. Facts ¶ 11.

[39] Respondent also testified that she understood Willis to have suggested that the Front Office wanted to move forward as quickly as possible and that termination was a possibility due to the serious nature of the matter.

[40] Stip. Facts ¶ 12.

[41] Stip. Facts ¶ 13.

[42] Stip. Facts ¶ 14.

During the meeting, Garner asked Respondent whether he could forensically examine her phone. She consented. Respondent also volunteered that the texts were saved on her personal MacBook and said she would bring that laptop to the office on Monday, October 24. She also emailed Garner a copy of the screenshotted text messages[43] as well as a copy of a Verizon cellular message log that she said she had downloaded on October 18.[44] That message log showed that Respondent received an SMS text message from Hines's phone number at 2:07 p.m. on Saturday, October 15. Willis testified that Respondent cooperated during the "non-adversarial" meeting, and Garner described the meeting as ending "amicably."

After the meeting, Respondent messaged Cohen, "I didn't rage quit, but I do want to quit." She also visited Robinson, who testified that Respondent was very upset and cried throughout their one-hour conversation. Respondent told Robinson that the Front Office wanted to extract data from her phone, and she felt she had no choice but to consent. According to Robinson, Respondent contemplated whether she could "just factory reset" her phone. Robinson understood that a factory reset would erase any added information to the phone, thereby eliminating any potential evidence about the origin of the messages. So, while Robinson acknowledged that Respondent could factory reset the phone, Robinson's message was "Let's not do that." Instead, Robinson explored with Respondent the possibility of giving limited consent to search the phone while focusing on reasons why extraction would be beneficial. After the conversation became circular, Robinson told Respondent to go home for the weekend.

Garner testified that later that afternoon, he received a communication from Conboy. According to Garner, Conboy relayed Robinson's conversation in which Respondent had mulled over whether to factory reset her phone.[45]

That same afternoon on October 21, Warly, Respondent, D'Angelo, and Aziz gathered in Warly's office. According to Respondent and Aziz, the group discussed Respondent's situation and concluded that it was inappropriate for Garner to have requested to forensically examine her phone. Later that night, Respondent called Aziz, who is very knowledgeable about digital forensics, to ask about the extraction process. Aziz testified that Respondent was curious about whether the Front Office could extract her phone without examining her private data. He also recalled Respondent inquiring about the technical capabilities of the platforms used to forensically examine cell phones.

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[43] Ex. 13.

[44] Ex. 14.

[45] Respondent testified that she never told Robinson she might factory reset her phone. But given Robinson's near-contemporaneous report of the discussion to Conboy, and her own near-contemporaneous report to Garner—coupled with Robinson's credible manner and demeanor and her absence of motive—we consider Robinson's testimony convincing and find that Respondent did, indeed, contemplate factory resetting her phone during her conversation with Robinson. *See also* Ex. 18 at 15.

The Weekend of October 22, 2022

Respondent testified that on Saturday, October 22, the following events occurred. She drew herself a bath as a stress-relief measure. While the bath was filling, she placed her phone on a bathtub tray that extended across the width of the bathtub and then left the room to get a bottle of water. When she returned to her drawn bath, she found that both the bathtub tray and her phone had fallen into the bathwater. She immediately turned off the water, grabbed her phone, and dried it off, only to find that it was nonfunctional.

Panicking and distraught, Respondent went to her desk, where she kept her work and personal laptops. She used her work laptop, which was on a riser, to call a coworker via Microsoft Teams. After speaking with the coworker, she tried to calm herself down by taking a sip of water. However, she was rattled; the open water bottle slipped out of her hands and spilled all over her desk, including on her personal laptop. Her MacBook immediately went black. Aside from her alarm clock, no other electronic devices were affected.

Respondent used her work laptop to set up two separate Apple Genius Bar appointments to repair her two devices. Apple's Genius Bar informed her that trying to recover her data would be costly and unlikely to succeed. Based on this information, Respondent opted not to pursue repair of her iPhone or MacBook.

On the night of Saturday, October 22, Respondent emailed Garner and Willis:

> I'm sorry to let you know that I unfortunately had two incidents earlier this afternoon where my phone was completely submerged in hot water and my Macbook had significant water damage. I let them dry and took them to Apple, but they could not save anything from either of them, which means I lost all data and backups. I had to get a brand new phone, and my Macbook is completely wiped. The messages were not back[ed] up in my iCloud, and I lost all data on [my] Macbook, so I won't be able to provide any additional evidence. My damaged phone is with Apple to see if they could recover anything, but I was told it was unlikely since the motherboard, especially the CPU and memory functions were all significantly damaged.
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> I'm devastated that I may have tanked the investigation on my own, but that I also lost all of my personal data that were very important to me. All of this has been really difficult for me, but now it is affecting me financially as well. I'm not sure how the investigation will be affected, but if I could please get an update from you, I would really appreciate it.[46]

Garner responded to Respondent's email on Sunday, October 23, asking her to send copies of the Genius Bar work orders. When Respondent forwarded the work orders, which said that

[46] Ex. 15 at 2.

neither Respondent's phone nor her MacBook was recoverable, Garner decided not to attempt to extract those devices.

The Front Office Investigation—the Week of October 24, 2022

On Monday, October 24, Respondent dropped by Robinson's office. Robinson described Respondent as laughing, joking, and "giddy," displaying a "180 in shift of attitude" from the Friday prior. Respondent appeared to Robinson as if "a weight had been lifted off of her shoulders." Respondent enthusiastically recounted to Robinson how over the weekend both her laptop and her phone had been ruined by water damage. To Robinson, Respondent seemed to cast her account as "funny and humorous," as if to convey, "you'll never believe what happened." This struck Robinson as significant. Robinson recalled thinking that had her own laptop and phone had been destroyed during a single weekend, she would be far more distressed. Robinson also remembered questioning as coincidental Respondent's narrative that both devices were accidentally damaged, which seemed to Robinson "very convenient" in light of how upset Respondent had been just days before, when she learned that the Front Office wanted to forensically search her phone.

That same afternoon, McCabe accompanied Garner to Respondent's office. Garner asked Respondent to download her Verizon phone and data records in front of him, he said, for her protection and for the investigation's integrity. But Respondent was not able to log in to her Verizon account. Garner requested that she resolve her Verizon password issue that evening, and he promised to return the next day.

Garner and McCabe returned to Respondent's office on the morning of Tuesday, October 25. Garner perched on the credenza behind Respondent so he could look at her screen over her shoulder. McCabe stood on the other side of her desk. Garner requested that Respondent log into her Verizon account, after which she downloaded and emailed a spreadsheet to him. Respondent testified that she felt violated, as if she had no choice but to give Garner the message log. Yet neither Garner nor McCabe sensed any hesitation on Respondent's part.

Garner left Respondent's office with the newly downloaded message log, which he compared to the one she sent him on Friday, October 21. The two records matched; both showed that Hines sent Respondent a text message at 2:07 p.m. on October 15. Garner could not make sense of the conflicting information, as Respondent's and Hines's Verizon logs were contradictory. To resolve this discrepancy, Garner resolved to go "right to the source" by seeking documents from Verizon. He executed a search warrant and affidavit for both Respondent's and Hines's numbers from October 14 at 5:00 p.m. to October 15 at 3:00 p.m.[47] Garner's affidavit explained, "Because no record of a text message being sent by [Hines to Respondent] is located within his

[47] It was around this time that the Front Office's internal workplace investigation took on characteristics of a criminal investigation, though even at that point, Garner did not single Respondent or any other person out as the sole target of a criminal inquiry.

cellphone records or the forensic extraction of his phone, it is important to receive the above requested records to obtain evidence of any messages relevant to this investigation, including their content, when they were sent, and their originating phone number . . ."[48] The warrant issued on the afternoon of October 25.

On Thursday, November 1, Garner received from Verizon a records return on the warrant. The logs confirmed that Hines never sent an SMS text message at 2:07 p.m. on October 15.[49] But the Verizon records differed from the logs Respondent sent to Garner. The Verizon records showed that Respondent both sent and received an SMS text message at 2:07 p.m. on October 15, displaying her phone number as both the sender and the recipient.[50]

Late in the day on November 1, the Front Office decided to terminate Respondent's employment. Willis authored a termination letter; McCabe signed it on her behalf. The letter, which McCabe and Garner delivered to Respondent on the morning of Friday, November 2, justified the Front Office's termination decision by explaining the results of Garner's investigation. The letter noted that Respondent's text message exchange with Cohen took place forty-four minutes before she received the 'disgusting' text message she told him about; that no SMS text messages were sent from Hines's number to Respondent's number on October 14 or 15; and that an SMS text message was sent from Respondent's number to herself at 2:07 p.m. on October 15, the same time as the SMS text message Respondent had provided to the Front Office in a screenshot.[51] The Front Office rebuked Respondent for "fraudulently creat[ing] text messages" that appeared to be sent from Hines to her "in an effort to cause him to be dismissed from employment for sexual harassment."[52] The letter concluded, "This conduct on your part was completely antithetical to your role as a prosecutor in this office."[53] On November 2, Respondent's employment with the Denver DA's Office was terminated.[54]

The FVU held an all-hands mandatory meeting on the afternoon of Friday, November 2. Conboy led the meeting, which Aziz described as a "soup to nuts" explanation of why Respondent was terminated. Aziz was disturbed that so many details about the investigation were disclosed in this meeting, which he believed contrasted with the Front Office's usual practice of treating personnel matters as strictly confidential. Robinson believed, however, that the meeting was necessary to clear Hines's reputation and to quash rumors that Respondent was terminated for reporting sexual harassment.

[48] Ex. 18 at 16.
[49] Ex. 19 at 20.
[50] Ex. 19 at 13.
[51] Ex. 21 at 1-3.
[52] Ex. 21 at 3.
[53] Ex. 21 at 3.
[54] Stip. Facts ¶ 15.

Postscript

Robinson and Cohen covered Respondent's docket while a suitable replacement could be found. Robinson testified that some prosecutors in the DA's Office worried that based on this incident, people might harbor suspicion that Respondent fabricated evidence in her cases. But Respondent's cases were in "excellent order," Robinson said, and the DA's Office never saw anything to suggest that Respondent behaved deceptively while prosecuting FVU matters.

As for Hines, he testified that Respondent's accusations negatively affected the way his coworkers at the DA's Office viewed and interacted with him. Though the investigation exonerated him, the allegations nevertheless left an "indelible mark" on him reputationally. He felt "vilified." In addition, Hines testified that Respondent's calumny caused him to go to "some pretty dark places." The false rumors made him want to "hide under a rock" and caused him to treat his coworkers differently; he still feels wary, he said, about inviting a female colleague into his office without another person present. The episode also resulted in his feelings of depression and anxiety, for which he was prescribed medication. He feared for his job and worried he might not be able to provide for his family. He lost weight and sleep. Ultimately, he hated going to work, and he started looking for another job. At the same time, he withdrew physically and emotionally from his family at a pivotal time in the lives of his teenage children.

After Respondent's termination, Garner took possession of her work laptop. To preserve the laptop's data, Garner left the device on and "hot," plugged in in a desk drawer from November 2022 through December 2023, when he gave it to Bechthold to extract.

Bechthold performed the extraction in December 2023. When he did, he found an email from Respondent to Garner dated October 21, 2022, attaching a downloaded Excel spreadsheet containing Respondent's Verizon message logs. According to Bechthold, the underlying metadata showed that the spreadsheet had been forwarded from Respondent's Gmail account to her own work account. Bechthold testified that the underlying metadata also revealed that the Excel spreadsheet was created with a Microsoft Macintosh version of Excel at 7:23 p.m. on October 18, 2022, and that a modification time stamp showed that something within the document had been changed seven minutes later.[55] By reviewing the metadata, Bechthold discovered that Hines's telephone number had been added to the document as the last-entered, but not the last-appearing, information in the spreadsheet. In other words, while the user interface displayed Hines's phone number somewhere in the middle of the spreadsheet (on the line associated with October 15, 2022, at 2:07 p.m.), Hines's number appeared at the end of the underlying Excel code, signifying that the number was temporally the last entry made in the table.

[55] Respondent testified that she changed the spreadsheet but insisted that she deleted, rather than added, information. She did not elaborate as to the nature of that deletion.

III. LEGAL ANALYSIS

Colo. RPC 8.4(c) (Claim I)

The People s first claim alleges that Respondent violated Colo. RPC 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. This rule requires the People to prove that a lawyer who acted dishonestly possessed a "culpable mental state greater than simple negligence."[56]

The People contend that Respondent violated this rule in three ways: (1) by manufacturing the four text messages on October 14 and 15, 2022, and disseminating these texts to several coworkers and supervisors while falsely asserting the messages were from Hines; (2) by altering the Verizon message log that she downloaded on October 18, 2022, to make it appear that Hines texted her at 2:07 p.m. on October 15, 2022, and then sending that altered message log to Garner; and (3) by destroying her iPhone and MacBook in order to avoid having them examined or extracted.

Respondent asserts that the People have failed to state a valid claim under Colo. RPC 8.4(c). She argues that her alleged conduct was directed not toward a client, a tribunal, or the legal profession itself, but instead toward her employer, to whom she owes no professional duty of honesty. Respondent also maintains that she was under duress during the Front Office s investigation, foreclosing a finding that she acted with the minimum requisite mental state of recklessness.

The Hearing Board concludes that Respondent engaged in two intentional acts of dishonesty, as pleaded. First, we find that Respondent fabricated the four text messages she purported to receive from Hines on October 14, and 15, 2022. We are convinced that Hines never sent Respondent any communication, as demonstrated by Hines s Verizon cellular message and data logs, which reflect that he had no contact with Respondent, and by the extraction results from Hines s iPhone, which similarly revealed no communication with Respondent on October 14 or 15, 2022. In contrast, the absence of extraction results from Respondent s phone—and the events that precluded the extraction of Respondent s phone and laptop, as discussed below—provides yet another link in the chain of circumstantial evidence that supports this finding. The finding is further bolstered by Bechtold s discovery that Respondent s downloaded message log was altered, as discussed below.

We are also persuaded by the official Verizon cellular records, which show that Respondent both sent and received an SMS text message at 2:07 p.m. on October 15, 2022—the exact time of the fourth message Respondent purported to receive from Hines. We are further compelled to this conclusion because this fourth message appears as the final entry in a text thread along with the three prior iMessages sent on October 14, 2022, all of which appear under the heading "Dan"

[56] *In re Rader*, 822 P.2d 950, 953 (Colo. 1992).

and the initials "DH."[57] Since we find by clear and convincing evidence that Respondent fabricated the fourth message, we infer that she falsified the first three messages in the text thread and deleted the 'sent version' of those messages as well. Indeed, we find telling that Respondent texted Cohen about a "disgusting" message she claimed to have received at 6:27 p.m. on October 14, 2022, yet that "disgusting" message was in fact time-stamped at 7:11 p.m., forty-four minutes after Respondent's text to Cohen.

That Respondent disseminated these texts evinces her intent to deceive her coworkers, supervisors, and the DA's Office in general. When she affirmatively showed or described these forged messages to Krenzen, Warly, D'Angelo, Cohen, De Cecco, Cooper, Aziz, and Robinson, Respondent perpetrated a false and harmful narrative that Hines had sexually harassed her by sending her these messages.

Second, we find that Respondent intended to act dishonestly when she sent to Garner the Verizon message log she downloaded and altered on October 18, 2022, to misleadingly frame Hines as the author of the text sent at 2:07 p.m. on October 15, 2022. Our conclusion rests on several grounds. As an initial matter, we cannot accept the veracity of the message logs that Respondent downloaded and gave to Garner, since they not only conflict with Hines's downloaded message log but are also confuted by the official cellular records Verizon produced pursuant to a warrant. Bechthold's testimony that Hines's number was temporally the last-added data in Respondent's downloaded log, however, sways us fully that Respondent altered that message log to inculpate Hines. We also take into account that Respondent repeatedly deleted the messages from her phone, refused to formally report the messages, stonewalled meetings with the Front Office, and intentionally destroyed her phone and laptop to avoid having them extracted. These actions, when considered in combination with the other pieces of evidence discussed above, lend themselves to the unavoidable conclusion that Respondent intentionally deceived Garner to derail his investigation.

We also find that Respondent intentionally created a false impression that her devices had been accidentally ruined. On October 21, 2022, Respondent volunteered to bring her MacBook and iPhone to the DA's Office for extraction the following week. But during the weekend of October 22, 2022, both devices were destroyed by water damage in two separate but related and consecutive incidents. Respondent portrayed the damage as accidental, suggesting the phone inadvertently fell into her drawn bath on the same day that a bottle of water mistakenly slipped from her hands and doused her personal computer. In our view, this narrative is not plausible. If Respondent produced her devices in working condition, we have every confidence that the investigation would have uncovered evidence of Respondent's dishonest conduct, including her fabrication of text messages and her manipulation of her downloaded Verizon message log.

[57] Respondent's carefully crafted testimony that the messages were "from Dan Hines as Dan Hines was saved on [her] phone on those dates" suggests to us that she edited her contact for Hines or made a new contact in her phone, using her own phone number and Hines's name, to send the messages to herself.

Our incredulity is all the more warranted when Respondent s account is considered in context. In the afternoon of October 21, 2022, Respondent was so angry and upset at the prospect of her devices being extracted that she cried for an hour in Robinson s office. During that conversation, Respondent raised the idea of factory resetting her phone. Later that day she consulted with Aziz, a digital forensic specialist, about the capabilities of the DA s Office s extraction technologies. But when she returned to the office the following Monday, after her devices were destroyed, her disposition had changed considerably. In high spirits, acting as if the weight of the world had been lifted from her shoulders, Respondent chronicled for Robinson the destruction of her phone and personal laptop. Respondent s foreshadowing comments to Robinson and inquiries of Aziz on October 21, 2022, combined with her striking change in demeanor the next week, lead us to conclude that Respondent intentionally destroyed her devices, feigning their accidental damage, to conceal her earlier falsehoods.

Nevertheless, we cannot find that this separate incidence of deceit is an independent basis for a rule violation. While the People s complaint alleges that Respondent violated Colo. RPC 8.4(c) by destroying her devices, we see no dishonesty or fraud inherent in the act of demolishing one s own personal property. Instead, it is Respondent s intent to create a misleading picture of why, and perhaps how, those devices were destroyed that would run afoul of the rule. But because the People do not plead that Respondent violated Colo. RPC 8.4(c) through her efforts to create a false impression of the mishaps that befell those devices, we decline to find a rule violation on this third basis.[58]

Finally, the Hearing Board briefly addresses, and summarily rejects, Respondent s defenses. That Respondent s dishonesty was aimed at her employer and coworkers provides no legal loophole in Colo. RPC 8.4(c). Case law is rife with instances in which lawyers were disciplined under Rule 8.4(c) for their dishonesty toward their law firms, colleagues, supervisors, and employees as well as for their private conduct toward the "world at large."[59] Next, a defense of duress has no factual relationship to Respondent s inceptive act of dishonesty; when she falsified the four messages on October 14 and 15, 2022, she faced no actual or perceived workplace coercion. Nor does a defense of duress apply to Respondent s intentional act of presenting an altered Verizon log to Garner, as she did not seek to mislead Garner due to some threatened use of unlawful force.[60] While we will consider Respondent s claim of duress as a possible mitigating factor when

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[58] *See People v. Emeson*, 638 P.2d 293, 294 (Colo. 1981) (drawing on *In re Ruffalo*, 390 U.S. 544, 549-51 (1968), for the proposition that a respondent lawyer's rights to procedural due process are violated by consideration of charges not made in the formal complaint).

[59] American Bar Association *Annotated Model Rules of Professional Conduct*, 781 (10th ed. 2023) (collecting cases, including *In re Herman*, 348 P.3d 1125, 1132 (Or. 2015) ("Although no rule explicitly requires lawyers to be candid and fair with their . . . employers, such an obligation is implicit in the prohibitions set out in [Rule 8.4(c)].")).

[60] *See In re Pautler*, 47 P.3d 1175, 1181 (Colo. 2002) (noting that duress was not an available defense to a prosecutor who employed deceitful tactics, as the prosecutor did not act dishonestly at the direction of another person who threatened use of unlawful force on him or another person).

analyzing the appropriate sanction, we refuse to find that the defense negates Respondent s violative conduct altogether.

Colo. RPC 8.4(h) (Claim III)

Claim III alleges that Respondent violated Colo. RPC 8.4(h), which provides that it is professional misconduct for a lawyer to engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law. The People point to the same three acts undergirding their Colo. RPC 8.4(c) claim as violative here. Respondent challenges this claim. She contends that she did not intentionally harm Hines because she did not make any formal statement against him until the Front Office mandated her participation. As a legal matter, she argues that the same conduct cannot be disciplined under both subsections (c) and (h) of Colo. RPC 8.4. She further maintains that the reputational harm to Hines is not the type of harm Colo. RPC 8.4(h) was intended to address, as the harm essentially constitutes alleged defamation and is thus "a mere private wrong."[61]

We conclude that Respondent violated Colo. RPC 8.4(h) when she shared with her coworkers and supervisors the four counterfeit text messages that she created on October 14 and 15, 2022. We have no doubt that Hines suffered, at a minimum, reputational and emotional harm. He offered unrefuted testimony that he experienced personal and professional turmoil as a result of Respondent's fabricated messages. Respondent caused this harm directly and wrongfully; she made the messages appear as though he had written them, and she attributed the fake texts to him when she discussed them with coworkers. Further, she embarked on this course of action intentionally. Respondent not only knew she was creating false messages but did so with the conscious objective to malign Hines. While we cannot determine by clear and convincing evidence why Respondent was motivated to fabricate the texts, we are certain that she acted intentionally to besmirch Hines's reputation.

Respondent's fabrication of false messages reflects adversely on her fitness to practice because it undermines the pursuit of truth—the very foundation on which our system of justice rests. As the Colorado Supreme Court noted in *In re Pautler,* "[l]awyers serve our system of justice, and if lawyers are dishonest, then there is a perception that the system, too, must be dishonest."[62] Deception within the ranks of prosecutors in whatever form poses an even greater danger of eroding public confidence in the legal system and its practitioners. For that reason, the *Pautler* court "applied the prohibition against deception a fortiori to prosecutors."[63] Robinson's testimony breathed life into this postulate: Robinson noted that the DA's Office was concerned that members of the public or the bar might think that Respondent had potentially altered evidence in criminal

[61] Respondent's Hr'g Br. at 10.
[62] 47 P.3d at 1180.
[63] *Id.*

cases she prosecuted.[64] We thus do not hesitate to find that Respondent's purposeful campaign to smear Hines's character, which sullied his reputation at the DA's Office and jeopardized his job and his livelihood, constitutes direct, intentional, and wrongful infliction of harm that reflects adversely on her fitness to practice law.

We add, however, that we cannot conclude Respondent violated Colo. RPC 8.4(h) by altering her Verizon message log or by destroying her phone and laptop. While these acts inform our determination that she intentionally and deceitfully fabricated messages, we conclude that Respondent undertook these later acts, in the main, not to directly or intentionally harm Hines but primarily to hamper the investigation and to conceal her earlier mendacity.

Finally, we dispense with Respondent's defenses. Respondent argues that she did not formally come forward against Hines until the Front Office mandated that she do so. But our findings as to Colo. RPC 8.4(h) do not hinge on the statements she made during the investigation. Harm can be perpetrated informally, and the false messages Respondent showed her coworkers and immediate supervisors directly harmed Hines reputationally and emotionally. Respondent also suggests that the same conduct ought not be charged under different subsections of the same rule. We disagree. Colo. RPC 8.4(c) and Colo. RPC 8.4(h) require proof of different mental states and contain other disparate elements, including those involving harm. But even if these rules as charged call for overlapping proof, we reject Respondent's argument that her intentional infliction of harm should be forgiven merely because that misconduct "is also governed by another rule prohibiting dishonesty in a specific setting."[65] And last, we cannot endorse Respondent's contention that reputational harm is not the type that Colo. RPC 8.4(h) was meant to target. Factually, we find that Hines suffered not only reputational harm but also emotional harm. Legally, the plain language of the rule does not mandate the nature, type, or degree of harm necessary to prove a rule violation. No Colorado disciplinary cases construing Colo. RPC 8.4(h) suggest otherwise.[66]

IV. SANCTIONS

In determining sanctions, we are guided by the framework established by the American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[67] and Colorado

[64] Thankfully, Robinson said, that concern was merely hypothetical, and Respondent's files were in excellent shape when she was terminated.

[65] *See In re Kline*, 311 P.3d 321, 337 (Kan. 2013) ("Every licensed attorney is responsible for observing the Rules of Professional Conduct, regardless of whether the rules recite general or specific obligations.").

[66] *See, e.g., People v. Saxon*, 470 P.3d 927, 944 (Colo. O.P.D.J. 2016) (construing Colo. RPC 8.4(h) to conclude that a lawyer violated the rule by, among other things, inflicting on his victim reputational harm that interfered with her previously close relationships).

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

Supreme Court case law.[68] Following the ABA *Standards* framework, we consider the duty the lawyer 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 we may then adjust, in our discretion, based on aggravating and mitigating factors.[69]

ABA Standard 3.0 – Duty, Mental State, and Injury

Duty: When Respondent engaged in dishonest and intentionally harmful conduct, she violated her duty to the public to maintain her personal integrity.[70]

Mental State: As discussed above, we conclude that Respondent intentionally manufactured bogus texts and intentionally reported receiving those texts to her coworkers and immediate supervisors. By displaying and discussing these texts, she directly, wrongfully, and intentionally harmed Hines. She also intentionally altered her downloaded Verizon message log to conceal from Garner her prior deceptive conduct.

Injury: Respondent caused Hines reputational and emotional injury. This damage was all the greater because Respondent was a prosecutor, Hines asserted. Respondent also betrayed close coworkers and trusted confidants, including Robinson and Cohen, who advocated for her during the investigation. For those employees who continue to believe her, she contributed to what seems to us a rift of distrust with the Front Office. More broadly, she poisoned the morale of the DA's Office, contributing to an environment in which victims feared they might be disbelieved and others feared they might be wrongly accused. Further, her actions called into question whether the evidence in the criminal cases she prosecuted was genuine. Finally, her deception not only tarnishes the reputation of prosecutors, the profession, and by extension the legal system, but also threatens to undermine the credibility of sexual harassment victims who seek to hold accountable those who harmed them.

ABA Standards 4.0-8.0 – Presumptive Sanction

ABA *Standard* 5.11(b) applies here.[71] That *Standard* calls for disbarment when a lawyer engages in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that

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

[69] *In re Attorney F.*, 2012 CO 57, ¶ 15 (Colo. 2012).

[70] *See In re Cleaver-Bascombe*, 986 A.2d 1191, 1200 (D.C. 2010) ("Lawyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is 'basic' to the practice of law.") (citations omitted).

[71] Though the People urge us to also apply ABA *Standard* 7.1, we decline to so. Sanctions imposed under ABA *Standard* 7.0 are generally reserved for situations not implicated here, such as a lawyer's false or misleading communication about the lawyer or the lawyer's services, improper

seriously adversely reflects on the lawyer's fitness to practice. We conclude that Respondent's willingness to fabricate allegations, alter documents, and destroy evidence makes her unworthy of the profession's trust and renders her unfit to practice law.

ABA Standard 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances 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 sanction.[72] As explained below, we apply four factors in aggravation, two of which are entitled to great weight. Four factors in mitigation apply, though none is accorded anything more than limited weight.

Aggravating Factors

Dishonest or Selfish Motive – 9.22(b): Respondent's initial dishonest behavior was fueled by selfish motives. For reasons that remain opaque to us, Respondent pursued a personal vendetta against Hines by launching an informal smear campaign against him. Her later acts of dishonesty likewise arose out of self-concern, fueled by her motive to cover up her earlier dishonesty. After Garner's investigation threatened to expose her fabrications, she doctored her Verizon records and concocted a story intended to create a false impression that both her phone and laptop were destroyed in innocent accidents. We give this factor significant weight.

Pattern of Misconduct – 9.22(c): Respondent compounded her first dishonest act—creating false messages—by altering her Verizon message log with an eye toward misleading Garner. She then doubled down by destroying evidence while attempting to pass that destruction off as a personal misfortune. The number of dishonest acts alone warrants this factor's application, but we accord it only modest weight because each of the acts grew out of Respondent's initial deceit.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): From October 14, 2022, until the present, Respondent has steadfastly denied engaging in any misconduct. Worse still, her refusal to acknowledge her initial act of deceit led to yet more acts of dishonesty. We weigh this factor very heavily in aggravation.

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communication about fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

[72] *See* ABA *Standards* 9.21 and 9.31.

Additional Aggravation – 9.22: ABA *Standard* 9.22 sets forth a nonexhaustive list of aggravating factors.[73] As such, we also apply in aggravation Respondent s status as a prosecutor and a minister of justice, as she owes a higher duty to the public to act honestly and promote truth.[74]

Mitigating Factors

Absence of Prior Discipline – 9.32(a): Respondent has never been disciplined. Because she was admitted as a Colorado lawyer in May 2019 and her misconduct occurred in October 2022, however, we give little mitigating weight to this factor.

Personal and Emotional Problems – 9.32(c): Elizabeth Wynn is a Licensed Professional Counselor Candidate who is working under supervision to complete all requirements for full licensure. In that capacity, she counseled Respondent from April through August 2024 and testified as an expert on Respondent's behalf.[75] Wynn diagnosed Respondent with post-traumatic stress disorder and vicarious trauma brought on by Respondent's emotionally taxing work in the FVU. Wynn further testified that Respondent suffered from dysthymia, a mild but long-lasting form of depression. She also opined that Respondent may disassociate from trauma by responding to queries "robotically," experiencing truncated trains of thought, and exhibiting an emotionally flat affect. We question the reliability of Wynn's testimony for several reasons. First, Wynn was just a candidate for licensure when she treated Respondent, and she remained so even at the time she testified. Second, Wynn assessed and treated Respondent for a very limited time period—from April 2024 to August 2024. Third, although Wynn was aware of this disciplinary proceeding, she never reviewed the complaint and relied exclusively on Respondent's self-reports when rendering her diagnoses.[76] Wynn was therefore unaware of the specific allegations against Respondent, particularly allegations that Respondent fabricated Verizon phone records. Yet Wynn acknowledged that she would be concerned if those allegations were true. Finally, Wynn explained that she did not assess Respondent for malingering during their short time together. As such, even though the People assented to Wynn's qualification as an expert, Wynn's testimony carries little weight with us.[77]

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[73] *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 and are not to be applied mechanically in every case.").

[74] *See People v. Groland*, 908 P.2d 75, 77 (Colo. 1995).

[75] Respondent offered—and the People did not oppose—Wynn as an expert in mental health counseling. The Court therefore qualified her as an expert witness in mental health counseling.

[76] We understand that Wynn, as an unlicensed candidate, diagnosed Respondent after consulting with her supervising professional.

[77] No other witnesses testified that Respondent had ever exhibited symptoms consistent with depression or dysthymia, which further heightens our suspicions that Respondent may not have been candid with Wynn.

Respondent also described significant financial stressors brought on by monetary contributions she made to support her family. Though we recognize that both her work and family circumstances likely gave rise to stress and anxiety, we cannot accept that those personal problems affected her ability to distinguish right from wrong or had any causal link to her dishonesty. Further, we explicitly reject Respondent's insinuation that her disassociation from trauma precludes her from expressing remorse. We do not find any mitigating significance in Respondent's personal and emotional problems.

Full and Free Disclosure to Disciplinary Board or Cooperative Attitude Toward Proceedings – 9.32(e): Respondent urges us to apply this factor because she sat for a deposition in this proceeding. Because we expect that all respondent lawyers will sit for depositions if requested, we can see no reason to extend mitigating credit on that basis.

Inexperience in the Practice of Law – 9.32(f): Respondent asks for mitigation because she was licensed in May 2019 and had been practicing only around three years at the time of her misconduct. We decline to give this mitigator anything other than minimal weight because "inexperience does not go far in our view to excuse or to mitigate dishonesty . . . Little experience in the practice of law is necessary to appreciate such actual wrongdoing."[78]

Character or Reputation – 9.32(g): Although the testifying witnesses uniformly represented that Respondent was a dependable and skilled prosecutor, this mitigating factor does not move the needle for us much, if any, in light of her underlying misconduct. We find this factor to be of minimal import.

Imposition of Other Penalties or Sanctions – 9.32(k): Because Respondent was terminated from her employment at the DA's Office, this factor merits credit. We give it very little mitigating weight, however, as Respondent testified that she found another legal job in June 2023.

Additional Mitigation – 9.32: Respondent asks us to consider duress as a mitigating factor, but we decline to find mitigation is appropriate on that basis. We see nothing inherently coercive or threatening about Garner and McCabe's visits to Respondent's office on October 24 and 25, 2022.

Analysis Under ABA Standards and Case Law

The Colorado Supreme Court directs hearing boards to exercise discretion in imposing a sanction because "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[79] As such, we determine the appropriate sanction for a lawyer's misconduct on a case-by-case basis, looking to the ABA *Standards* for guidance in the exercise of that discretion. The ABA *Standards* give us a

[78] *In re Cleland*, 2 P.3d 700, 705 (Colo. 2000).
[79] *Attorney F.*, ¶ 20 (*quoting In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

theoretical framework that provides for "the flexibility to select the appropriate sanction in [a] particular case" after carefully considering the applicable aggravating and mitigating factors.[80] Thus, while prior decisions regarding the imposition of sanctions for lawyer misconduct can be persuasive, we are free to distinguish those cases and deviate from the presumptive sanction when appropriate.

The few Colorado disciplinary cases that present similar fact patterns are nonetheless distinguishable. In *People v. Lindquist*, a lawyer was suspended for three years for purposefully altering an exhibit to a response that was filed with a trial court in the hopes of benefiting herself financially.[81] The lawyer again relied on that falsified exhibit before an appellate tribunal.[82] Though the hearing board in that case applied two presumptive disbarment standards, including ABA *Standard* 5.11(b), it ultimately concluded that the lawyer s significant personal problems justified downgrading the sanction to a three-year suspension.[83] Those circumstances do not apply in this case.

In *People v. Saxon*, a hearing board likewise suspended a lawyer for three years after the lawyer physically assaulted and repeatedly emotionally harassed a romantic partner in a course of conduct that was designed to control and humiliate her.[84] *Saxon* is notable in that it is the only Colorado disciplinary case that substantively grapples with Colo. RPC 8.4(h). But *Saxon* provides an imperfect benchmark here, as the hearing board in that case applied ABA *Standard* 5.12, which calls for a presumptive sanction of suspension.[85]

Without other binding or persuasive Colorado authorities to reference, we hew closely to the ABA *Standards* as a guidepost for our decision. Under the ABA *Standards* framework, we begin with a presumed sanction of disbarment. While the number of applicable aggravating factors here equals the number of mitigating factors, we assign significantly less weight to the mitigation and accord far more import to the aggravating circumstances. In particular, we underscore Respondent s failure to acknowledge both the wrongful nature of her conduct and the harm that Hines and the DA s Office suffered. If a wrongdoer recognizes their misconduct and expresses remorse for it, rehabilitation is possible; conversely, failure to take these steps suggests that rehabilitation is not yet on the horizon. Here, Respondent s intentional and repeated deception and her unwillingness to take responsibility for her behavior convinces us that suspension is not appropriate. Because we conclude that Respondent engaged in several intentional acts of dishonesty to harm Hines, which seriously adversely reflects on her trustworthiness as a legal practitioner, we find that Respondent should be disbarred.

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[80] *Id.* ¶ 3.
[81] 470 P.2d 961, 976-77 (Colo. 2016).
[82] *Id.*
[83] *Id.*
[84] 470 P.3d at 947-51.
[85] *Id.* at 945.

V. CONCLUSION

Unremitting honesty must at all times be the backbone of the legal profession. When a lawyer repeatedly employs deceit and dishonesty to harm another person, that lawyer corrodes the integrity of the profession and threatens to compromise public confidence in the legal system. Such behavior seriously adversely reflects on the lawyer's fitness to practice law and should be met with disbarment.

VI. ORDER

The Hearing Board therefore **ORDERS**:

1. **YUJIN CHOI**, attorney registration number **53449**, is **DISBARRED.** The disbarment will take effect on issuance of an "Order and Notice of Disbarment."[86]

2. Respondent **MUST** timely 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 she 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 her 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 January 14, 2025**. Any response thereto **MUST** be filed within seven days thereafter.

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 reasonable costs of this proceeding. The People **MUST** submit a statement of costs **no later than January 14, 2025**. Any response challenging the reasonableness of those costs **MUST** be filed within seven days thereafter.

[86] 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.

DATED THIS 31st DAY OF DECEMBER, 2024.

BRYON M. LARGE
PRESIDING DISCIPLINARY JUDGE

ROBERT MUNSON
HEARING BOARD MEMBER

ELIZABETH WALD
HEARING BOARD MEMBER

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