***People v. Wazir-Ali Muhammad Al-Haqq*. 15PDJ046 (consolidated with 15PDJ102). October 6, 2016.**

A hearing board suspended Wazir-Ali Muhammad Al-Haqq (attorney registration number 19900) from the practice of law for twenty-four months. Al-Haqq's suspension took effect on November 14, 2016. To be reinstated, Al-Haqq will bear the burden of proving by clear and convincing evidence that he has been rehabilitated, has complied with disciplinary orders and rules, and is fit to practice law.

Al-Haqq's suspension arose out of his misconduct in three client matters. In the first case, Al-Haqq failed to inform his client, who had been charged with multiple felonies, that he would be out of the country and failed to adequately explain any adverse consequences the trip might have on the client's case. In a second matter, Al-Haqq incompetently represented a client in an immigration case, and he did not sufficiently communicate to her his strategy for helping her obtain a green card. In addition, he charged this client an unreasonable fee for his incompetent representation. While representing a third client in a worker's compensation matter, Al-Haqq failed to act with reasonable diligence and collected an unreasonable fee for the minimal work he completed. When his client terminated his services, Al-Haqq refused to return the case file. In all three matters, Al-Haqq technically converted his clients' funds by depositing them into his operating account before they were earned, and he failed to retain accounting, billing, and banking records.

Al-Haqq's misconduct violated Colo. RPC 1.1 (a lawyer shall competently represent a client); Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(b) (a lawyer shall explain a matter so as to permit the client to make informed decisions regarding the representation); Colo. RPC 1.5(a) (a lawyer shall not charge an unreasonable fee), Colo. RPC 1.15(a) (2008) (a lawyer shall hold client property separate from the lawyer's own property); Colo. RPC 1.15(j) (2008) (a lawyer shall maintain certain records related to trust accounts and client billing); Colo. RPC 1.15A (a lawyer shall hold client property separate from the lawyer's own property); Colo. RPC 1.16(d) (a lawyer shall protect a client's interests upon termination of the representation, including by refunding unearned fees and any papers and property to which the client is entitled); and Colo. RPC 3.2 (a lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client).

Please see the full opinion below.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** WAZIR-ALI MUHAMMAD AL-HAQQ	Case Number: **15PDJ046 (consolidated with 15PDJ102)**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)	

In a criminal case, Wazir-Ali Muhammad Al-Haqq ("Respondent") failed to inform his client that he would be out of the country and failed to adequately explain any adverse consequences the trip might have on the case. Respondent also incompetently represented a client in an immigration case, and he did not sufficiently communicate his strategy in getting her a green card. In addition, he charged this client an unreasonable fee for his incompetent representation. While representing a third client in a worker's compensation matter, Respondent failed to act with reasonable diligence and collected an unreasonable fee for work he completed. When he was terminated, he refused to return his client's file. In all three cases, Respondent technically converted his clients' funds by depositing them into his operating account before they were earned, and he failed to retain accounting, billing, and banking records. Respondent's misconduct warrants a suspension for twenty-four months.

I. PROCEDURAL HISTORY

On June 22, 2015, Jacob M. Vos, Office of Attorney Regulation Counsel ("the People"), filed a complaint with Presiding Disciplinary Judge William R. Lucero ("the PDJ") in case number 15PDJ046, alleging Respondent violated Colo. RPC 1.1, 1.4(b), 1.5(a), 1.8(f), 3.2, 1.15(a), 1.15(j), and 1.16(b) in his representation of three clients. Respondent answered the complaint pro se on July 7, 2015, generally denying any wrongdoing and asserting arguments in response. On July 20, 2015, the People moved to strike Respondent's answer under C.R.C.P. 12(f) and asked the PDJ to order Respondent to comply with C.R.C.P. 8(b). The PDJ granted the People's motion in part, and ordered Respondent to file an amended answer, specifically admitting or denying each allegation of the People's complaint. Respondent filed an amended answer on August 10, 2015.

Troy R. Rackham entered his appearance as Respondent's counsel on September 4, 2015, and the PDJ held a scheduling conference on September 14, 2015. There, the PDJ set the hearing for March 29-30, 2016. The People filed a second complaint against Respondent this time in case number 15PDJ102, on November 19, 2015. The PDJ consolidated the two cases on December 1, 2015, and continued the hearing. Respondent answered the second complaint on January 15, 2016. The parties attended a second scheduling conference on January 21, 2016, and the PDJ reset the hearing for July 12-14, 2016.

On June 20, 2016, the PDJ granted the People's motion for telephone testimony, allowing Ernest Ward—an inmate in Caňon City—to testify by telephone at the hearing. On July 7, 2016, the PDJ denied the People's motion in limine, which sought permission to introduce evidence of Respondent's prior discipline during the evidentiary stage of the hearing. Instead, the PDJ permitted the People to submit Respondent's prior discipline in a sealed envelope and allowed the parties to submit a brief under seal with detailed argument concerning the weight of Respondent's prior discipline.

On July 8, 2016, Respondent notified the PDJ that he was in California attending to his ailing father. He sought the PDJ's permission to appear by telephone for the disciplinary hearing or, in the alternative, asked for a continuance. The PDJ denied that motion and ordered Respondent to attend at least one day of the hearing in person. On July 11, 2016, the PDJ granted the People's motion in limine, which proposed to exclude Respondent's late-disclosed character witnesses. The PDJ also denied Respondent's request for a bifurcated hearing.

At the July hearing, Vos appeared for the People and Rackham represented Respondent before a Hearing Board comprising Peter R. Bornstein and John M. Lebsack, members of the bar, and the PDJ. The Hearing Board received testimony from Naomi Ward, Ernest Ward,[1] Elisa Orozco-Vasquez, Bryan Boetel, Bryon Large, Ebenezer Assefuah, James Olson, Clifford Eley, Laurie Ann Seab, and Respondent,[2] and it considered stipulated exhibits S1-S28 and S30-S43, as well as the People's exhibits 3 and 6-8.[3] Because the hearing went longer than anticipated, the parties were ordered to file written closing arguments. The People filed their closing statement on July 21, 2016, Respondent filed his on July 28, 2016, and the People filed a rebuttal on August 1, 2016.

II. FINDINGS OF FACT[4] AND RULE VIOLATIONS

Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on October 22, 1990, under attorney registration number 19900. He is thus

[1] Ernest Ward testified by telephone.
[2] Respondent appeared in person on the third day of trial. He attended by telephone the first two days.
[3] Exhibit 3 is Respondent's disciplinary history, which was filed under seal.
[4] Where not otherwise indicated, these facts are drawn from testimony provided at the hearing.

subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[5]

Respondent grew up in Compton, California, and currently resides there while caring for his elderly father. Respondent received his formal education by way of an associate's degree in engineering and technology from Pasadena City College and bachelor's and master's degrees in communications from the University of Colorado. He later earned a master's degree in international studies at the University of Denver and completed law school there. He is licensed to practice law in both California and Colorado. After earning his J.D., he served as a public defender for one year and then practiced law in a private firm for another year.

Next Respondent opened his own general private practice. He practiced law from his home, employing no staff. Before returning to California, Respondent practiced immigration, criminal, domestic relations, and some civil law. Respondent considers himself well-versed in criminal law. He testified that he has tried over 1,000 criminal cases during his career, including felony theft, burglary, and forgery cases. He continues to take continuing legal education ("CLE") courses in criminal law to remain competent. Respondent began practicing immigration law in 2000 and has handled approximately forty immigration cases, mostly in the area of removal and appeals. He has successfully argued one removal appeal based on an extreme hardship waiver. Respondent opined that he is familiar with immigration law precepts and provides competent representation and excellent services to his immigration clients. Respondent has also handled at least ten worker's compensation cases, and he considers himself generally familiar with this area of law. Finally, Respondent attested that he is frequently retained to communicate with third persons on behalf of his clients, and has done so in over 200 cases. He testified that he believes he has a good reputation as a lawyer in Denver.

Recordkeeping and Production of Records

In 2014, the People began investigating Respondent's representation of Ernest Ward, Elisa Orozco-Vasquez, and Ebenezer Assefuah. That year, the People asked Respondent for, among other things, his accounting, billing, and banking records for each of these matters.[6] Respondent did not have many records responsive to these requests, but he said that he gave the People what he had—written fee memos in each case, receipts from the Orozco-Vasquez matter, and billing statements in all three cases that were created after termination of the representations. Respondent produced no trust or operating account records or accountings of his clients' funds.[7]

[5] *See* C.R.C.P. 251.1(b).

[6] *See* Exs. 6-8.

[7] Laurie Ann Seab, the People's investigator, confirmed that every document Respondent had produced appears in the parties' stipulated exhibits.

Respondent explained that it was his general practice in his home office to keep his paper client files in a filing cabinet and all electronic files on his computer. He did not use any billing software to keep track of client funds. Respondent maintained that he was locked out of his home as a result of a court order issued in his dissolution proceeding, which denied him access to his home. The court gave him one day to move his belongings to storage, he said. He placed what he could in storage, yet he never visited that facility to retrieve his possessions or client files, if any. According to Respondent, his ex-wife ransacked what was left in his office, destroying his client files and computer. Consequently, he said, he was unable to provide any records to the People. But Respondent later testified that he did not file for divorce until 2015 and was not barred from his home until April of that year. Respondent also admitted he was not prevented from producing documents responsive to the People's requests in 2014. Thus, we find that when the People requested Respondent's accounting records in 2014, he still lived in his house and had access to his client files and computer.[8]

Through this conduct, we find that Respondent violated Colo. RPC 1.15(a) and 1.15(j) (2008) in the Ward and Orozco-Vasquez matters. Colo. RPC 1.15(a) requires a lawyer to keep adequate records of all funds held in connection with a representation for seven years after termination. Colo. RPC 1.15(j) also establishes specific requirements for safekeeping property of clients and third parties, including requiring a lawyer to maintain appropriate receipt and disbursement records of all deposits and withdrawals and an appropriate recordkeeping system for all trust accounts.[9] Likewise, Respondent violated Colo. RPC 1.15A (2014) when he failed to maintain a complete record of Assefuah's funds.[10] Respondent testified that he never used billing software in his practice, and he offered no description of an appropriate recordkeeping system he maintained for client funds. He did not produce records of disbursement receipts or records of deposits and withdrawals from his trust or operating accounts. Accordingly, we have no trouble concluding that Respondent's recordkeeping efforts fell woefully short of the requirements of Colo. RPC 1.15(a) and (j) and Colo. RPC 1.15A.[11]

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[8] *See* Ex. 6 at 000438 (requesting on January 6, 2014, Respondent's billing records in Ward's case); Ex. 7 (requesting on March 21, 2014, Respondent's accounting, billing, and banking records in Orozco-Vasquez's case); Ex. 8 (requesting on October 23, 2014, Respondent's complete accounting of Assefuah's funds).

[9] Colo. RPC 1.15(j)(1)-(8) (2008).

[10] Colo. RPC 1.15A (requiring attorneys to keep complete records of funds and property of clients or third persons in compliance with Colo. RPC 1.15D); *see* Colo. RPC 1.15D(a)-(d) (describing required records).

[11] *See People v. Fager*, 925 P.2d 280, 281 (Colo. 1996) (finding that a respondent violated Colo. RPC 1.15(a) by failing to render a full accounting of his client's funds); *see also In re Chinquist*, 714 N.W.2d 469, 472 (N.D. 2006) (finding a violation of N.D. RPC 1.15(a) where a lawyer accepted advance cash payments from a client but failed to render an accounting, create billing statements, retain records of cash payments, and deposit funds into a trust account).

Ward Matter

In 2013, Ernest Ward was arrested for criminal trespass and identity theft, both felony charges.[12] At one time Ward was married to Naomi Ward; in 2013 they were divorced but remained close friends. Ms. Ward worked at ISAM, an assisted living facility owned by her sister Fae Rease. Rease was married to Respondent in 2013. After his arrest, Ward asked Ms. Ward to hire a private attorney for him because he was dissatisfied with the public defender. Ms. Ward agreed to pay for the attorney she hired. Rease encouraged Ms. Ward to consider hiring Respondent.

Ms. Ward testified that Respondent agreed to represent Ward for $5,000.00.[13] She paid him $300.00 on May 2, 2013.[14] She then met with Respondent at his home office on May 16, 2013, where they reviewed a memo that he had written.[15] Ms. Ward agreed to pay Respondent an additional $300.00 for Ward's legal fees,[16] which she did the same day, and to pay him $200.00 each month until the $5,000.00 was paid in full.[17] Ms. Ward believed Respondent's fee of $5,000.00 included both fees and costs, in part because Respondent did not discuss costs separately with her during this meeting. As of this meeting, Ms. Ward had not yet told Ward that she had hired Respondent to represent him. But Ms. Ward understood that Respondent would represent Ward on his pending criminal charges, including appearing at his preliminary hearing on June 17, 2013. According to Ms. Ward, Respondent never mentioned that he planned to travel to Ghana and thus could not attend Ward's preliminary hearing.

Respondent gave a somewhat different account of the meeting. He stated that he and Ms. Ward discussed the engagement and agreed that Ward was his client and would make all decisions about the representation. Ms. Ward expressed no reservations about this. He maintained that he told Ms. Ward he was "under the gun" to enter his appearance in Ward's case because he was leaving for Ghana soon. He recalled clearly telling Ms. Ward that the judge might not agree to his entry of appearance given his extended absence, and that Ms. Ward could hire another lawyer if the judge denied his request. He explained that he also discussed his $5,000.00 fee with Ms. Ward and also used the word "retainer" in his memo but that, in his mind, his fee was merely an estimate of the hours it would take him to conclude Ward's case—twenty-five hours at $200.00 an hour—and he never intended for costs to be included in this amount. He agreed that he did not discuss costs with Ms. Ward

[12] *See* Ex. S16. In this exhibit and elsewhere, Respondent refers to himself as "Dr. Al-Haqq."
[13] *See* Ex. 16.
[14] *See* Ex. S16; *see also* Ex. S17 at 000443 (receipt no. 920195). Respondent testified that he never received this $300.00 payment but because Ms. Ward was his sister-in-law at the time he wanted to "keep the peace" by giving her a receipt for the payment. He stated that by doing so, he was not agreeing that he received the funds, only that she made a payment. *But see* Ex. S21 (acknowledging receipt of $780.00); Ex. S43 (acknowledging receipt of $300.00).
[15] *See* Ex. S16.
[16] Respondent also disputes receiving this $300.00 payment. *But see* Exs. S21 & S43.
[17] Ex. S16.

during this meeting, but he expected those costs to be low because Ward could request his file from the public defender's office.

On June 4, 2013, Ward met Respondent for the first time at the Downtown Denver Detention Center.[18] This meeting lasted less than twenty minutes.[19] There, Respondent told Ward that Ms. Ward had hired him. Respondent brought with him the written memo dated May 16, 2013, which memorialized the payment terms with Ms. Ward. According to Ward, they did not discuss costs, nor did Respondent inform him that he was leaving the country and could not attend the preliminary hearing. After meeting with Respondent, Ward said, he was happy that Ms. Ward had hired him and was relieved to have a private attorney on his case.

Respondent, on the other hand, testified that he discussed with Ward his payment arrangements with Ms. Ward. He also avowed that he informed Ward he was traveling to Ghana for two months and could not attend any hearings during this time. He said he told Ward that he would file an entry of appearance before he left the country, and that if the court did not grant the entry, Ward would have to continue with the public defender. He also testified that he instructed Ward to request his case file from the public defender to get discovery.

Having carefully considered Respondent's manner and demeanor on the witness stand, the Hearing Board does not find credible his testimony about having informed Ward of his trip to Ghana. Their first meeting was brief, lasting less than twenty minutes, and we find it unlikely that Respondent had adequate time to tell Ward he was leaving or to explain the possible effects his absence would have upon Ward's case. Further, Respondent testified that he had no idea what hearings or motions were pending when he filed his entry of appearance and a motion for a continuance on June 9, 2013, and thus, it is likely that Respondent's absence was never discussed. Accordingly, we find Ward's testimony about the topics discussed at their first meeting to be more convincing.

On June 9, 2013, Respondent filed a combined entry of appearance, motion for continuance of Ward's upcoming hearings, and request for discovery with the Denver District Court.[20] Also in that motion, Respondent informed the court that he would be out of the country from June 10 to August 1, 2013, and that Ward was waiving his right to a speedy trial.[21] According to Ward, he did not see this filing before Respondent submitted it, but he learned Respondent was leaving for Ghana sometime after their June 4, 2013, meeting at the jailhouse.

[18] Ex. S38.
[19] Ex. S38 (indicating that Respondent signed in at 9:45 a.m. and signed out at 10:05 a.m.).
[20] Ex. S18.
[21] Ex. S18.

On June 17, 2013, the district court held a hearing in Ward's case.[22] Because Respondent was in Ghana, Ward appeared with public defender, Evan Zuckerman. Zuckerman did not know that Ward had hired Respondent.[23] The court denied Respondent's entry of appearance because it did not want to continue the scheduled hearing for two months until Respondent's return.[24] The court continued the case and held a preliminary and motions hearing on June 21, 2013,[25] when Ward once again appeared with Zuckerman.[26] The court ruled on several pending motions.[27]

When Respondent returned to Denver, he filed an emergency motion to reconsider the denial of his entry of appearance on July 29, 2013.[28] In that motion, Respondent asserted that because the court denied his entry of appearance, he was unable to obtain discovery for Ward and so could not adequately prepare for the case.[29] He also asked the court to grant his entry of appearance or to hold a hearing on his motion.[30] At a hearing on August 5, 2013, the court granted Respondent's entry of appearance, removed Zuckerman from Ward's case, and accepted Ward's speedy trial waiver.[31]

Sometime thereafter, Respondent realized that he needed $817.23 to obtain a copy of Ward's discovery from the district attorney's office.[32] The cost was high because of video surveillance evidence. Respondent testified that he had initially expected to obtain the discovery from the public defender, and that it was not his general practice to pay for discovery for clients. He said that when he asked the public defender for Ward's discovery, he was told that it was not that office's policy to release any discovery. Respondent stated that he then told Ms. Ward on August 15, 2013, that he needed $817.23 to get Ward's discovery.[33] Respondent insisted he told Ms. Ward that unless he could obtain the discovery, it would be impossible for him to represent Ward. Ms. Ward understood this, he said. Ms. Ward, on the other hand, insisted that she did not have these funds and thought Respondent's fee covered these costs.

Only eighteen days after successfully entering his appearance in Ward's case, Respondent moved to withdraw on August 23, 2013.[34] In that motion, Respondent stated that he needed to withdraw from Ward's case due to "an ethical conflict."[35] Respondent testified that the ethical conflict was his inability to obtain discovery. Ward does not recall

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[22] Ex. S20 at 1-2.
[23] Ex. S20 at 1.
[24] Ex. S20 at 4.
[25] Ex. S20 at 4.
[26] Ex. S42 at 000458; Ex. S40 at 000449-50.
[27] Ex. S42 at 000458; Ex. S40 at 000450.
[28] Ex. S41; Ex. S40 at 000450.
[29] Ex. S41 at 000464.
[30] Ex. S41 at 000465.
[31] *See* Ex. S22 at 000401; Ex. S40 at 000452.
[32] *See* Ex. S21.
[33] *See* Ex. S21.
[34] Ex. S19; Ex. S40 at 000453.
[35] Ex. S19 at 000455.

speaking with Respondent about this motion before he filed it. Respondent visited Ward on August 24, 2013, to discuss the motion to withdraw.[36] Respondent told him he could hire a new attorney or use the public defender going forward.

The court held a hearing on and granted Respondent's motion to withdraw on August 26, 2013.[37] The court determined that Ward's speedy trial had tolled for the three weeks Respondent was on his case.[38] According to Ward, he did not object to Respondent's withdrawal because the court had to appoint him a new attorney. Zuckerman was immediately reappointed,[39] and Ward testified that he eventually retained another private attorney. Respondent claimed his withdrawal did not harm Ward as he revealed no client confidences.

Ms. Ward and Respondent dispute how much money she paid him to represent Ward. According to Ms. Ward, she gave Respondent between $1,200.00 and $1,400.00 for his representation.[40] The People produced copies of thirteen receipts from Ms. Ward—all for cash and money orders—which she claimed evidenced her payments to Respondent. Ms. Ward explained that, with the exception of the money order she personally mailed to Respondent, she never paid Respondent directly for Ward's legal fees. Instead, her practice was to give Rease cash to deliver to Respondent, and in exchange, Rease gave Ms. Ward a receipt. This is why the receipts state "RECEIVED FROM Ms. Ward . . . to give to Wazir."[41] Ms. Ward said that she called Respondent and confirmed that he received each payment she made. Seven of Ms. Ward's receipts, however, appear to be payroll checks from ISAM to Ms. Ward,[42] and one receipt was for a different time period altogether.[43] Only five of the receipts reflect payments made to Respondent for his representation of Ward: $300.00 paid in cash on May 1 or 2, 2013;[44] $300.00 paid on May 29, 2013;[45] $180.00 paid in cash on June 2, 2013;[46] $100.00 paid in cash on August 7, 2013;[47] and a $40.00 money order paid on August 23, 2013.[48] These receipts reflect a total of $902.00.

[36] Ex. S39 at 6.
[37] Ex. S22 at 000401; Ex. S40 at 000453.
[38] Ex. S40 at 000453.
[39] Ex. S22 at 000401; Ex. S40 at 000453.
[40] *See* Ex. S17.
[41] *See* Ex. S17.
[42] *See, e.g.*, Ex. S17 at 000441-42, 000489 (including receipts for Ms. Ward for specific pay periods and noting check number).
[43] *See* Ex. S17 at 000442 (including a money order receipt dated February 3, 2012). Ms. Ward admitted that this receipt was included in error.
[44] Ex. S17 at 000443 (receipt no. 920195).
[45] Ex. S17 at 000443 (receipt no. 920197).
[46] Ex. S17 at 000443 (receipt no. 920198).
[47] Ex. S17 at 000441 (handwritten receipt).
[48] Ex. S17 at 000442 (money order receipt).

Respondent, on the other hand, denies being paid more than $780.00.[49] Respondent testified that although he does not remember receiving any cash payments from Rease, his limited records reflect that he received $780.00.[50] He believes the $100.00 cash payment on August 7, 2013, was part of the $300.00 payment made on May 29 or part of the $180.00 payment on June 2, 2013, although he had no records to support this statement. He also disputed that Ms. Ward ever called to confirm that he had received funds from Rease. He was unable to show where he placed the $780.00 once received, but he testified that he did not deposit these funds into trust because he earned them on receipt.[51] He thus assumes this money was placed in his operating account.

Given the lack of clarity in Ms. Ward's receipts, we determine that there is clear and convincing evidence of only payments totaling $780.00.

Respondent's billing statement in Ward's case indicates that he spent a total of "11.5 hours" and charged $2,300.00 in attorney's fees.[52] As relevant here, Respondent billed Ward for the following: one hour for meeting with Ms. Ward on May 16, 2013; two hours for meeting with Ward on May 31, 2013; thirty minutes for preparing and filing the entry of appearance on June 9, 2013; three hours to prepare and file the emergency motion for reconsideration and to attend the hearing on that issue; and two hours to draft the motion to withdraw and to attend the hearing on that motion.[53] Respondent testified that he did not create his billing statement contemporaneously with his tasks, but rather he went back through his file to prepare the statement. He does not remember when he did this and admitted that the statement contained errors.[54]

Respondent never refunded to Ms. Ward any of the attorney's fees she paid him because he believed he had earned his fees. According to Respondent, even though he only represented Ward for three weeks, he educated Ward about his case and applicable law.

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[49] *See* Ex. S21 (noting that he received $780.00 in payments in the Ward matter). He could not remember whether he received these payments directly from Ms. Ward or from Rease on behalf of Ms. Ward. He has no billing receipts showing when he received these payments.

[50] Ex. S21. He does not know the location of his accounting records in this case. He also testified that it was his practice to print out a dated and signed receipt when he received a payment, but he does not recall whether he did so in this matter.

[51] He testified that his general practice was to place unearned funds into trust.

[52] Ex. S21.

[53] Ex. S21 at 000491.

[54] *Compare* Ex. S21 (indicating that Respondent met with Ward at the jail for two hours on May 31, 2013) *with* Ex. S38 (indicating that Respondent met with Ward at the jail for twenty minutes on June 4, 2013). *Compare* Ex. S21 (indicating that Respondent prepared and filed the emergency motion for reconsideration on August 2, 2013) *with* Ex. S41 (indicating that Respondent filed the emergency motion for reconsideration on July 29, 2013). *Compare* Ex. S21 (indicating that Respondent met with Ward at the jail on August 25, 2013) *with* Ex. S39 (indicating that Respondent met with Ward at the jail on August 24, 2013).

The People charge Respondent with seven rule violations in the Ward matter, premised on Colo. RPC 1.4(b), 1.5(a), 1.8(f), 3.2, 1.15(a) (2008), 1.15(j) (2008), and 1.16(b). We conclude that they have proved three of their claims by clear and convincing evidence.[55]

We determine first that the People have proved Respondent violated Colo. RPC 1.4(b), which requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. As discussed above, we credit Ward's testimony that his first meeting with Respondent included no discussion about Respondent's trip and his inability to attend his preliminary hearing. We also find that while Respondent informed Ward that he was leaving the country before the preliminary hearing, he never sufficiently explained the consequences that his absence might have on Ward's case, including necessitating unnecessary and additional motions practice.[56] When communication difficulties arise between a lawyer and a client, the onus is on the lawyer to ensure the client understands critical aspects of the representation. Here, Respondent's inadequate communication deprived Ward of "sufficient information to participate intelligently" in deciding whether to retain Respondent or another private attorney.[57]

We also determine that the People have proved by clear and convincing evidence Respondent's violation of Colo. RPC 1.15(a) (2008), which requires a lawyer to hold client property in a trust account. A lawyer does not earn fees "until the lawyer confers a benefit on the client or performs a legal service for the client."[58] Advances of unearned fees belong to the client and must be deposited in the lawyer's trust account until earned.[59] It is undisputed that Respondent received $780.00 from Ms. Ward in connection with Ward's representation. Although Respondent maintains that he earned these funds upon receipt and was therefore permitted to deposit them into his operating account, we disagree. Respondent received $300.00 from Ms. Ward on May 1, 2013, which he deposited into his operating account. But he had not earned the $300.00 by that date and therefore converted that sum. Respondent did not work on Ward's case until May 16, 2013, when he met with Ms. Ward for one hour—earning $200.00. Ms. Ward next paid Respondent an additional $300.00 on May 29, 2013, and he again deposited the funds into his operating account. As of

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[55] The People plead two separate factual predicates for their Colo. RPC 1.15(a) claim. As discussed above, we have already found that the People have proved by clear and convincing Respondent's violation of this rule for his failure to maintain complete records of Ward's funds.

[56] *See In re Fett*, 790 N.W.2d 840, 848-49 (Minn. 2010) (finding a violation of M.S.A. RPC 1.4(b) where lawyer advised an agent under a power of attorney to transfer the principal's assets to himself without discussing the consequences of self-dealing).

[57] Colo. RPC 1.4 cmt. 5. The Hearing Board agrees with Respondent, however, that he did not violate Colo. RPC 1.4(b) by failing to adequately inform Ward about the costs of discovery. Respondent assumed that he could obtain the discovery from the public defender, and once he realized that this was not the case, he promptly informed Ward that without discovery, he would withdraw. Ward did not object to Respondent's withdrawal. We also do not find that his failure to apprise Ms. Ward of his trip to Ghana violated this rule, as she was not Respondent's client.

[58] *See* Colo. RPC 1.5(f).

[59] *See id.*

this date, Respondent had only earned $200.00 yet had received a total of $600.00 from Ms. Ward. He thus converted $400.00 of unearned fees.

On June 2, 2013, Ms. Ward paid Respondent an additional $180.00. Again, Respondent stated that he deposited these fees into his operating account because he believed he had earned them. But Respondent had not earned the fees, as he performed no work on Ward's case between May 16 and June 4, 2013. He therefore converted the $180.00 when he failed to place it into trust. On June 4, 2013, Respondent met with Ward at the jail and reviewed court files—tasks he indicated took a total of two hours.[60] Only then did Respondent earn an additional $400.00. By failing to keep Ward's unearned fees in a trust account, we find that Respondent technically converted a total of $580.00 in contravention of Colo. RPC 1.15(a) (2008).[61]

We reach the same conclusion about Colo. RPC 3.2. This rule requires an attorney to make reasonable efforts to expedite litigation consistent with the interests of the client. Even though Ward wanted Respondent to represent him and consented to his entry of appearance and continuance, Respondent did not fully explain to Ward the delay his trip to Ghana might have on his case. It was in Respondent's interest to delay Ward's trial so he could travel to Ghana, and Ward's waiver of a speedy trial was thus made for Respondent's own convenience. By advocating for a two-month delay, Respondent did not promote Ward's best interests and his efforts were unreasonable.

The People have not, however, met their burden of proof as to the remaining claims in this client matter. Under the circumstances, we do not agree that Respondent charged Ward an unreasonable fee for his services. Colo. RPC 1.5(a) precludes a lawyer from charging and collecting an unreasonable fee. Colo. RPC 1.5(a) lists seven factors to consider when assessing the reasonableness of a fee, including the time and labor required, the novelty and difficulty of questions, the requisite skill involved, the fee customarily charged for similar legal services, the amount involved and results obtained, and the nature and length of the representation. Respondent has practiced criminal law for twenty-six years, and charging $200.00 an hour is not unreasonable given his experience. Respondent claims that he spent eleven and a half hours working on Ward's case. Even if some of Respondent's work was not reasonably billed (e.g., by failing to explain the effects of his trip to Ghana, Respondent forced Ward to expend money on a motion for a continuance, a motion to reconsider, and a hearing), we can find that Respondent put in work equal to $780.00—or 3.9 hours billed at an hourly rate of $200.00—during his short representation.

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[60] Respondent admitted that his billing entry of May 31, 2013, was an error and the date should correctly have read June 4, 2013.

[61] *See In re Sather,* 3 P.3d 403, 409 (Colo. 2000) (finding that an attorney has an obligation under Colo. RPC 1.15(a) to keep clients' funds separate from the attorney's own funds and that an advance fee remains the property of the client until such time as it is earned); *People v. Varallo*, 913 P.2d 1, 11 (Colo. 1996) (finding a violation of Colo. RPC 1.15(a) where an attorney deposited unearned retainers into a business operating account and spent the unearned funds); *People v. Brown*, 863 P.2d 288, 290 (Colo. 1993) (finding a violation in part where "respondent accepted a retainer from the client [and] deposited the retainer in the law firm's operating account although the retainer had not yet been earned").

We also conclude that Respondent did not contravene Colo. RPC 1.8(f)(1) when he entered a payment arrangement with Ms. Ward prior to meeting with Ward for the first time. Colo. RPC 1.8(f)(1) provides that a lawyer shall not accept compensation for representing a client from someone other than the client unless the client gives informed consent. The People have not proved that Ward did not consent to Respondent receiving compensation from Ms. Ward. Ward knew before meeting with Respondent that Ms. Ward was going to hire a private attorney for him and had agreed to pay those fees. He did not want to use the public defender, and once Ward met Respondent he was happy to have him as his lawyer. Even though Respondent and Ms. Ward's payment terms were negotiated before Respondent's first meeting with Ward, and Ms. Ward had paid Respondent $780.00 by that time, it is clear that Ward consented to this arrangement.[62]

Last, we cannot find that Respondent transgressed Colo. RPC 1.16(b), which allows a lawyer to withdraw from a representation only if doing so will not materially adversely affect the client's interests.[63] The court allowed Respondent to enter his appearance on August 5, 2013, and he withdrew three weeks later. Although Ward's speedy trial was tolled for three weeks, there is no evidence that this caused Ward any harm. The same day the court accepted Respondent's withdrawal it reappointed Zuckerman as Ward's counsel; there was no period where Ward was without an attorney.

Orozco-Vasquez Matter

Orozco-Vasquez entered the United States from Mexico in 1996 without inspection. She stated that she left the United States again in 2000 and reentered the country that same year, again without inspection. At the time, she lived in Florida with her husband, Bryan Boetel—a U.S. citizen—and their infant son. In 2002, Boetel filed an I-130 Petition for Alien Relative to secure a green card for his wife. In April 2004, U.S. Citizenship and Immigration Services ("USCIS") informed Boetel that Orozco-Vasquez was ineligible to adjust her status.[64] After receiving this notice, Boetel and Orozco-Vasquez stated that they spoke with two immigration attorneys in Florida and were told by each of them that Orozco-Vasquez could not get a green card because of how she entered the country.

In 2009, Boetel, Orozco-Vasquez, and their son moved to Colorado, where Boetel had grown up. Orozco-Vasquez cleans houses, and Boetel manages a Subway restaurant. Orozco-Vasquez was referred to Respondent by one of her work colleagues.

In August 2012, Orozco-Vasquez first met with Respondent to seek advice about securing permanent legal residency. According to her, Respondent said that despite what she had been told, he could easily get her a green card with just ten hours of work. She was

[62] *See* Colo. RPC 1.8 cmt. 11 (noting that a lawyer is prohibited from accepting or continuing a representation unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and the client provides informed consent).
[63] Colo. RPC 1.16(b)(1).
[64] Ex. S7. This statement by USCIS did not affect Respondent's strategy because he believed Orozco-Vasquez could still adjust her status with an I-601A waiver.

so happy and excited about the prospect of visiting her family once again in Mexico that she hired Respondent.[65] Respondent testified that he discussed the cost of his representation during this short meeting.

Orozco-Vasquez and Boetel met with Respondent on August 27, 2012, when they filled out a client intake sheet and discussed the representation.[66] Orozco-Vasquez understood that Respondent would arrange for her to get a green card, and Boetel maintains that Respondent verbally referred to a "green card" during the meeting. On the intake sheet, Orozco-Vasquez wrote that she needed "assistance with [her] green card," and Respondent referenced "I-130, I-485, I-601A, possible court proceedings."[67] Orozco-Vasquez testified that she did not understand what the letters and numbers meant on the intake sheet or how Respondent would get her a green card. Both Boetel and Orozco-Vasquez remembered handing Respondent the paperwork from the Florida lawyers and Respondent making copies of the papers before returning them.

Respondent testified that he told them that his hourly rate was $200.00, that his work would likely take longer than ten hours, and that he would cap his fee at $2,000.00.[68] He recalled speaking with them also about the filing fees associated with the various forms. According to Respondent, he explained that he could assist Orozco-Vasquez in getting a green card though it would not be an easy task. He denied reviewing any documents from the Florida attorneys. He also said that Orozco-Vasquez told him she had entered the United States without inspection and she had either never left the United States or had left just once. Respondent believed that, based on these facts, Orozco-Vasquez was subject to a ten-year bar but she could apply for a waiver. He determined that to get Orozco-Vasquez a green card, he needed to first file an I-130 Petition for Alien Relative, next file an I-485 Application to Register Permanent Residence or Adjust Status, and finally file an I-601A Application for Provisional Unlawful Presence Waiver.[69] Respondent said that he explained to the couple that for an I-601A waiver to be successful, they would need to establish an extreme hardship if Orozco-Vasquez was deported. He thought they agreed to his strategy. After the meeting, Respondent said he researched immigration laws to confirm he had given the couple the correct advice.

As immigration attorney Bryon Large explained at the disciplinary hearing, an immigrant who enters the United States without proper inspection and remains in the country for longer than one year faces a ten-year bar—meaning that the individual cannot return to the United States for ten years if he or she leaves the country.[70] This individual,

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[65] *See* Ex. S4 (explaining on Respondent's client intake sheet that Orozco-Vasquez needed assistance with her green card).
[66] Ex. S4.
[67] Ex. S4.
[68] Ex. S4.
[69] *See* Ex. S4 (noting forms: I-130, I-485, and I-601A).
[70] *See* 8 U.S.C. § 1182 (a)(9)(B)(i)(II) (2013) (providing that any alien who has been unlawfully present in the United States for one year or more and who again seeks admission within ten years of the date of such alien's departure is inadmissible).

however, can apply for an adjustment of status and for an I-601A waiver while remaining in the United States upon a showing of extreme hardship.[71] To qualify for this waiver, Large stated, the immigrant must have a U.S.-citizen spouse and have already applied for a green card. But, Large indicated, an immigrant who entered the United States without proper inspection and remained in the country for longer than a year, and who then leaves country and reenters again illegally, is subject to a lifetime bar.[72] The lifetime bar is not subject to a waiver, according to Large. He opined that Orozco-Vasquez was subject to a lifetime bar given her unlawful entries in 1996 and 2000. This was an important fact that should have steered Respondent's course of action, said Large.

On August 31, 2012, Orozco-Vasquez met with Respondent at his home office.[73] He again explained to her, she said, that to get her a green card he needed to fill out forms and maybe go to court on her behalf. He prepared a written memo memorializing their fee agreement.[74] For Respondent's representation "in her immigration case to obtain permanent residency in the United States as a spouse of an American Citizen," Orozco-Vasquez would pay Respondent $2,000.00 including a $600.00 retainer and $200.00 a month until her balance was paid in full.[75] Orozco-Vasquez paid Respondent $600.00 that day, and Respondent deposited this sum into his operating account, believing he had earned the fees. Orozco-Vasquez testified that she timely paid Respondent $200.00 a month because he told her that he would stop working on her case if she missed even one payment.[76] Orozco-Lopez said that it was not easy for her to make these payments, and she had to borrow money on occasion. Respondent maintained that he provided Orozco-Vasquez with a monthly receipt, but she testified that she saw no receipts until she filed a complaint with the People.[77]

According to Respondent, his first step was to renew Orozco-Vasquez's I-130 petition, which had expired.[78] On November 3, 2012, Respondent entered his appearance on Boetel's behalf and filed the I-130 petition, which he and the couple had prepared.[79] Orozco-Vasquez gave Respondent a cashier's check of $420.00 to pay the filing fee.[80] The I-130 petition was ultimately approved by USCIS in March 2013, but Orozco-Vasquez was told by USCIS that she still needed to apply for an adjustment of her status.[81]

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[71] *See* 8 U.S.C. § 1182 (a)(9)(B)(v) (providing for an inadmissibility waiver).
[72] *See* 8 U.S.C. § 1182 (a)(9)(C)(i) (providing that any alien who has been unlawfully present in the United States for an aggregate period of more than one year and who enters or attempts to reenter the United States without being admitted is inadmissible).
[73] Ex. S2.
[74] Ex. S2.
[75] Exs. S2 & S5; *see also* Ex. S4 (outlining payment arrangement for representation).
[76] *See* Ex. S5 (payment receipts).
[77] *See* Ex. S5.
[78] *See* Ex. S9.
[79] Ex. S31.
[80] Ex. S3.
[81] Ex. S9 (approving Boetel's I-130 petition).

At the disciplinary hearing, Large opined that USCIS's approval of this petition secures an immigrant's "place in line" pending an application for a lawful visa. In this case, there was no real benefit to Respondent's filing of this petition because Orozco-Vasquez was not eligible to adjust her status through an I-601A waiver.

In March 2013, Respondent testified, he gave Orozco-Vasquez a copy of USCIS's approval of the I-130 petition and explained to her that he would next file the I-485 application for a green card. Both Boetel and Orozco-Vasquez testified that Respondent became difficult to contact around this time.

Respondent next filed an I-485 application, seeking adjustment of Orozco-Vasquez's immigration status.[82] Respondent filed this application on April 25, 2013, along with a $1,070.00 filing fee, which Orozco-Vasquez paid by cashier's check.[83] Respondent testified that he filed this application knowing USCIS would deny it due to Orozco-Vasquez's inability to adjust her status. Once this occurred, he stated, he intended to file the I-601A waiver and ask for a stay of the I-485 denial.[84] He attested that he received advice on this exact course of action in response to an inquiry he made through a California immigration attorney's website.[85] He believed that filing the I-485 before the I-601A waiver would provide Orozco-Vasquez with the most benefit. For example, he said that if her I-601A waiver was approved, she would eventually need to file the I-485 application, and that process would already be complete. Also, he testified, an I-601A waiver is time-intensive and costly. By filing the I-485 first, he would have more time to prepare the I-601A waiver, and Orozco-Vasquez would have more time to gather the filing fees.

Boetel recalled Respondent bringing the completed I-485 application to their home for the couple to sign but does not remember Respondent telling them that he knew it would be denied. To the contrary, Boetel believed that by filing this application they were getting closer to obtaining a green card.

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[82] Ex. S6.

[83] Exs. S3 & S6.

[84] Respondent's testimony conflicts with his earlier statements to the People during their investigation, when he indicated that Orozco-Vasquez had the required entry paperwork to answer USCIS's I-485 request for additional information. Ex. S33 at 000181. He told the People that the I-485 application was denied because Orozco-Vasquez did not cooperate with him or provide the requested paperwork to USCIS, not that he knew the application would be denied. Ex. S33 at 000181. In his deposition, he testified that he had no recollection of any conversation with Orozco-Vasquez about why he wanted to file the I-485. He also indicated that he filed the I-485 to establish her presence in the United States. Large testified that an I-485 application cannot be used to establish an immigrant's presence in the United States.

[85] After further inquiry from the Hearing Board, Respondent explained that this attorney has a website that allows people to email questions, review videos, and watch seminars. Respondent said that he sent an email through the website seeking advice about Orozco-Vasquez's case and someone answered. He did not speak with an attorney directly. Respondent did not produce any evidence of his communication with this attorney. *See* Ex. S11 (research from Orozco-Vasquez's case file). He also said he discussed his strategy with another experienced immigration attorney but did not remember his name.

According to Large, filing the I-485 application for Orozco-Vasquez was futile since she was subject to the lifetime bar and could not adjust her status. This is basic knowledge for an attorney who handles immigration matters, he opined. That Orozco-Vasquez's application was denied was not a surprise to Large because she had entered the United States twice without inspection and had no valid entry paperwork.

On May 7, 2013, USCIS informed Orozco-Vasquez that she needed to schedule a biometrics appointment as the next step in her I-485 application, which she did.[86] Two days later, USCIS sent Orozco-Vasquez a letter indicating that it was unable to process her application because she needed to submit proof of her eligibility to adjust her status.[87] But because she had entered the United States without inspection twice,[88] she could not provide the evidence that USCIS was asking for. Respondent knew this, she said, since the beginning of his representation. At this point, Boetel called Respondent and told him that he had wasted their money because they could not provide the information USCIS required. According to Orozco-Vasquez and Boetel, Respondent came to their house, apologized for filing the wrong paperwork, and told them that he would help by next filing the I-601A waiver and paying one half of the filing fee. Orozco-Vasquez was upset that she had lost $1,070.00 by filing the I-485. USCIS eventually denied Orozco-Vasquez's I-485 application on April 23, 2014.[89]

Respondent stated that he next spoke with Boetel and Orozco-Vasquez about filing the I-601A waiver and explained the process for establishing a substantial hardship. He believed that Orozco-Vasquez was subject only to a ten-year bar and that this waiver was her only path to obtain a green card. He testified that he was familiar with the procedure to establish a substantial hardship as he had successfully litigated this issue in the past for another client. Respondent said that around this time the attorney-client relationship began to break down. He said that Orozco-Vasquez asked him to help her sister with an immigration issue but her sister was ultimately deported and he speculated that this event caused his relationship with Orozco-Vasquez to deteriorate. Respondent never filed the I-601A waiver on behalf of Orozco-Vasquez because she did not cooperate with him, he said. Nor did he request a stay of the I-485 application.

Boetel's understanding of the I-601A waiver was that Respondent needed him and Orozco-Vasquez to establish that their son would experience a substantial hardship if his mother was deported to Mexico and that Respondent wanted their son to be evaluated by a psychologist. Boetel attested that he told Respondent they could not afford this evaluation

[86] *See* Ex. S32.
[87] Ex. S10.
[88] *See* Ex. S10 at 000236 (asking for evidence of eligibility for adjustment of status under section 245(i) of the Immigration and Nationality Act and stating that to be eligible for adjustment under section 245(i), Orozco-Vasquez must be the beneficiary of an immigrant visa petition or of an application for labor certification filed on or before April 20, 2001).
[89] Ex. S8.

or meet the high burden regardless of any evaluation.[90] Boetel stated that Respondent thereafter became very difficult to communicate with and he would not answer or return their calls. Respondent, on the other hand, denied that Boetel told him that he could not meet this burden and maintained that Boetel simply did not have the funds to pay for a professional evaluation. Respondent averred at the disciplinary hearing that he would never have agreed to represent Orozco-Vasquez had he known they would not file an I-601A waiver. Respondent testified that if he was wrong about whether Orozco-Vasquez could qualify for an I-601A waiver because she was subject to a lifetime bar, he would have "made a major mistake" and "something should be done."

According to Large, Respondent should never have pursued an I-601A waiver. First, Orozco-Vasquez was ineligible for this waiver because of her lifetime bar. Also, as Large testified, the harm that a parent's deportation causes to a U.S. citizen child does not satisfy the requirements of an I-601A waiver as the immigration statute forecloses this approach.[91]

On November 9, 2013, Boetel sent Respondent a letter by certified mail and terminated Respondent's representation for reasons including that he had not obtained the promised green card. Boetel asked Respondent for a refund of $3,500.00.[92] Boetel testified that Respondent never claimed this certified letter from the post office and it was eventually returned to them. Boetel ultimately terminated Respondent's representation by telephone, he said.

Respondent testified that he was unaware Boetel sent him a certified letter because of his pending divorce. Respondent further claimed that it was he who terminated the representation by sending a letter to Boetel on November 14, 2013. He also included a billing statement, which contained no dates and only a brief description of his work and time spent on each task.[93] Respondent testified that the tasks on his statement were largely in chronological order, although he was not positive. He explained that he created this statement by looking through his client's file.[94] He acknowledged, however, that the statement contained errors. For example, he should not have placed "[c]onsultation with family regarding I-485 denial" on the statement because the denial happened long after his representation had terminated.[95] His billing statement showed that Orozco-Vasquez still owed Respondent an additional $900.00 in attorney's fees for a total of $2,900.00.[96]

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[90] Boetel indicated that he contacted USCIS to discuss filing an I-601A waiver but was told that the burden was very high and that the waiver would ultimately not be granted because of his wife's circumstances.

[91] *See* 8 U.S.C. § 1182 (a)(9)(B)(v) (providing for an inadmissibility waiver to an immigrant who is a spouse of a U.S. citizen, "if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien").

[92] Ex. S1.

[93] Ex. S14 at 000195.

[94] He did not include the dates because he was not exactly sure when he did these tasks. He kept notes of his tasks in the file.

[95] Ex. S14 at 000195.

[96] Ex. S14 at 000195.

Respondent claimed that he deposited all of Orozco-Vasquez's fees directly into his operating account because he had earned them all on receipt. For example, he professed to have earned her $600.00 payment by August 31, 2012, because he previously met with Orozco-Vasquez twice, performed some legal research, and contacted USCIS about her I-130 petition. He also said he earned each $200.00 payment upon receipt. He defended his $2,000.00 fee, stating that it was reasonable for him to charge Orozco-Vasquez for a legal strategy that he believed would benefit her. This was also far less money than another attorney would require for the same amount of work, he speculated.

The Hearing Board finds that Respondent's credibility is impugned by his shifting narratives of his strategy in Orozco-Vasquez's case. As one example, his testimony at the disciplinary hearing about why he filed the I-485 application was at odds with his earlier statements made to the People during their investigation and at in his deposition. Additionally, he recreated his billing statements after the People initiated their investigation, the statements contained errors, and they appear to have been created to justify his statements that he had earned Orozco-Vasquez's funds on receipt. Respondent also maintained that he did not know about Boetel's certified letter in November 2013 because of his divorce, yet Respondent did not file for divorce until 2015. Moreover, we found Orozco-Vasquez to be particularly credible with respect to her testimony describing her understanding of Respondent's representation, which was clearly at odds with Respondent's account.

The People claim Respondent violated four ethical rules during his representation of Orozco-Vasquez. They have proved each of their claims by clear and convincing evidence.

First, we find that Respondent violated Colo. RPC 1.1, which requires a lawyer to provide competent representation. In deciding whether a lawyer employs the requisite knowledge or skill in a particular matter, relevant factors for consideration include the relative complexity and specialized nature of the case, the lawyer's general experience, the lawyer's training and experience in the relevant area of law, the lawyer's ability to prepare for the matter, and whether it is feasible for the lawyer to associate with or consult with a lawyer of established competence.[97] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation.[98]

Large testified that Orozco-Vasquez's case was relatively straightforward, the prevailing immigration law was clear, and an experienced immigration lawyer would know that Orozco-Vasquez could not get a green card, as she was subject to a lifetime bar. Both Large's and Respondent's testimony demonstrate that Respondent had a fundamental misunderstanding of the lifetime bar concept and its effect on Orozco-Vasquez's ability to adjust her status. Respondent's chosen course of action was therefore futile and provided no benefit to Orozco-Vasquez. Boetel testified that he could not meet the high burden to establish substantial hardship nor did he have the funds to complete an evaluation. Large

[97] Colo. RPC 1.1 cmt. 1.
[98] *Id*. at cmt. 4.

likewise testified that Orozco-Vasquez could not apply for an I-601A waiver in the first instance.[99] Accordingly, Respondent's assurance to Orozco-Vasquez that he could get her a green card by filing an I-130 petition, an I-485 application, and an I-601A waiver for substantial hardship was incompetent and reflected a grave misunderstanding of immigration law.[100]

In addition, Respondent did not show that he consulted with an experienced immigration attorney about Orozco-Vasquez's case other than submitting an inquiry through a California attorney's website. He never spoke with another attorney. This effort falls short of a sufficient consultation.[101] Nor was Respondent able to achieve the requisite level of competence through reasonable preparation. His case file was sparse, the research he conducted on immigration law was rudimentary, and he presented no research that supported his chosen strategy. Respondent himself could not articulate why he pursued his course of action, and his testimony at the disciplinary hearing conflicted with his earlier statements during the People's investigation. With this assessment, the Hearing Board finds by clear and convincing evidence that Respondent violated Colo. RPC 1.1.

Next, by failing to explain his strategy to Orozco-Vasquez, which prevented her from making informed decisions about the representation, Respondent contravened Colo. RPC 1.4(b).[102] Orozco-Vasquez testified credibly that she did not understand how Respondent was going to get her a green card, other than that it would be easy. He told her which forms he would file but did not sufficiently explain to her why he was filing those particular forms. We credit Orozco-Vasquez's testimony that Respondent never communicated to her why he intended to request a stay of the denial of the I-485

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[99] 8 U.S.C. § 1182 (a)(9)(C)(i) ("Any alien who (I) has been unlawfully present in the United States for an aggregate period of more than 1 year . . . and who enters or attempts to reenter the United States without being admitted" is "inadmissible.").

[100] *See People ex. rel. Goldberg v. Gordon*, 607 P.2d 995, 997 (Colo. 1980) (finding that a lawyer who treated a corporation as a tenancy in common among shareholders, then used a probate proceeding to transfer joint-tenancy assets, demonstrated a "total lack of understanding of fundamental principles essential to the practice of law"); *see also In re Kaszynski*, 620 N.W.2d 708, 711 (Minn. 2001) (finding that a lawyer's ignorance of immigration law and procedures and failure to supply documentation required to support clients' claims for relief put clients in danger of deportation).

[101] *See id*. ("Competent representation can also be provided through the association of a lawyer of established competence in the field in question.").

[102] *See* Colo. RPC 1.4 cmt. 5 ("The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so."); *see In re Fisher,* 202 P.3d 1186, 1194 (Colo. 2009) (finding that the attorney failed to provide his client with competent representation where the attorney had never handled a case involving a federal pension before, never contacted the plan management company during the nine months he represented the client, did not review the attorney's handbook published by management, did not consult the management's website, and did not consult with experts in the field of federal benefits).

application while he applied for the I-601A waiver. We find that Respondent did not explain his strategy sufficiently for Orozco-Vasquez to understand it.[103]

We also conclude that Respondent charged Orozco-Vasquez an unreasonable fee in violation of Colo. RPC 1.5(a). Respondent knew or should have known that he could not help Orozco-Vasquez given the facts of her case and the lack of legal relief available. Large was clear that there was nothing Respondent could have done to change Orozco-Vasquez's status. Her case was impossible from the beginning, yet Respondent led her down a primrose path and collected unreasonable fees for work that provided absolutely no benefit to her. While it may have been reasonable for Respondent to charge Orozco-Vasquez for their initial meeting, once he realized there was no legal recourse, he could not reasonably continue charging her. The $2,000.00 he collected for his services was far more than appropriate in light of the work he performed, the lack of value he provided to Orozco-Vasquez, and the incompetent legal services he provided to her.

Respondent also violated Colo. RPC 1.15(a) by negligently converting $900.00 of Orozco-Vasquez's funds. Respondent never placed her unearned fees into trust and instead deposited all of her payments directly into his operating account, believing he had earned them on receipt. Our analysis of exactly how much money Respondent converted and when is hampered by the lack of dates on Respondent's billing statement, but Respondent testified that his entries on that statement were largely in chronological order. Based on the testimony and stipulated exhibits we find that from August 27 to 31, 2012, Respondent had completed the following tasks listed on his billing statement: initial consultation with retainer payment (1.00 hours); file setup (.50 hours); review of previously filed documents (2.00 hours); preparation of I-130 (1.00 hours); and visit with family at residence (1.00 hours). Thus, we find that by August 31, 2012, Respondent completed five-and-a-half hours of work and was arguably entitled to $1,100.00. Orozco-Vasquez paid Respondent $600.00 on August 31, 2012, and therefore owed him an additional $500.00 as of this date.

The evidence further demonstrates that Respondent performed no further work on Orozco-Vasquez's case until he completed the I-485 application. This task was completed between April 16, 2013 (the date Orozco-Vasquez signed the I-485 application) and May 2, 2013 (the date Respondent filed the I-485 with USCIS). By April 2013, Orozco-Vasquez had already paid Respondent the following amounts: $200.00 on September 20, 2012 (bringing her balance owed to $300.00); $200.00 on October 20, 2012 (bringing her balance owed to $100.00); $200.00 on December 20, 2012 (resulting in an overpayment of $100.00); $200.00 on January, 19, 2013 (resulting in overpayment of $300.00); $200.00 on February 20, 2013 (resulting in an overpayment of $500.00); and $200.00 on March 20, 2013 (resulting in an overpayment of $700.00). Respondent did not place any of these funds in trust, even though he completed no work on the case after August 2012. By March 20, 2013, Respondent had therefore technically converted $700.00 of Orozco-Vasquez's funds.

[103] *See In re Cohen*, 82 P.3d 224, 229 (Wash. 2010) (finding that a lawyer violated Wash. RPC 1.4(b) where the lawyer unilaterally transferred a case to mandatory arbitration without telling the client that losing the arbitration would make the client liable for the opponent's attorney's fees).

Respondent then performed one-and-a-half hours of work preparing Orozco-Vasquez's I-485 application on or around April 16, 2013, earning an additional $300.00 in attorney's fees, bringing Orozco-Vasquez's balance to negative $400.00. Orozco-Vasquez paid him an additional $200.00 on April 20, 2013. Respondent did not place this $200.00 payment in trust. Thus, as of April 20, 2013, Respondent technically converted an additional $200.00 of Orozco-Vasquez's funds, for a total of $900.00 converted. He completed the remaining tasks on his billing statement after May 29, 2013, when he performed an additional seven-and-a-half hours of work.

Assefuah Matter

In June 2014, Ebenezer Assefuah injured his left arm while working, which required surgery and rendered him unable to work. He reported his injury to his boss right away and had surgery on his arm four days later. He amassed substantial medical bills and was worried he would lose his job. He also learned that his boss would not pay him while he could not work and wanted to apply for worker's compensation benefits. Assefuah did not understand how to file a worker's compensation claim for benefits, however, and a friend of his suggested that he reach out to Respondent.

Assefuah first spoke with Respondent in July 2014 over the phone. After that, Assefuah and Respondent exchanged a series of text messages and eventually agreed to meet at Respondent's home office on the evening of July 16, 2014.[104] Respondent was running late and the two did not meet until around 8:00 p.m. that evening.[105] They met for about two hours, Assefuah said, and while there, they executed a written memo.[106] The memo's subject line referenced a "Worker's Compensation Claim." In the memo, Respondent stated that he would represent Assefuah in his "worker's compensation case" in exchange for an $800.00 retainer,[107] and Assefuah paid Respondent by check that evening.[108] This money represented Assefuah's entire savings. Respondent's hourly rate was also listed in the memo as $200.00 per hour, and both parties signed the memo.[109] Assefuah gave Respondent copies of his medical papers at this meeting.[110] Assefuah understood that Respondent's work on his case would take no more than four hours and that Respondent would file a worker's compensation claim for benefits—not a lawsuit—on his behalf. Respondent did not tell him that he would charge him for this initial meeting, Assefuah attested, but Respondent did state that he would let Assefuah know if anything came up

[104] *See* Ex. S34.
[105] Ex. S34 at 000030.
[106] *See* Ex. S34 at 000030; Ex. S25.
[107] Ex. S25.
[108] Ex. S25; *see* Ex. S23. The payee line on Assefuah's check was left blank so Respondent could fill in his name.
[109] Ex. S25; *see also* Ex. S24 (client intake form).
[110] Ex. S26. These medical documents contained very little information about Assefuah's care and treatment and consisted primarily of generic forms such as pre-operative instructions, post-surgery instructions, hospital privacy practices, pre- and post-appointment information, information about certain medication, co-pay receipts, return to work verification forms, and general hospital information. Respondent does not dispute that these are the records Assefuah brought to him.

that would require more than four hours of work. Assefuah testified that Respondent promised to send a letter to his employer and that he would meet with Assefuah the following Monday.

Respondent, on the other hand, testified that Assefuah wanted only to hire him to speak with his employer about whether he was still employed and to convince his employer to file the worker's compensation claim on his behalf. He did not, according to Respondent, want help with filing a worker's compensation claim himself. Assefuah felt trepidation about filing the claim and was worried about retaliation, Respondent said. He eased Assefuah's fears and explained to him that it was against the law for an employer to retaliate against an employee for filing a benefits claim and that he could file the claim himself. Respondent stated that after meeting with Assefuah on July 16, he set up Assefuah's file, read his medical records, and researched worker's compensation law to determine what he could do for Assefuah. Respondent admitted that he did not hold the $800.00 retainer in trust because he thought he had earned it. Respondent does not remember where or when he deposited Assefuah's $800.00 retainer but thought he deposited it into his operating account.

We find Assefuah's testimony about his understanding of the scope of Respondent's representation to be more credible than Respondent's. It was apparent that Assefuah did not understand how to file a worker's compensation claim and wanted Respondent's assistance. He thought Respondent would do this for him.

Respondent next left three voice mail messages for Assefuah's employer between July 17 and 21, 2014. He stated that he prepared for each of these calls in order to ready himself for any conversation. He never reached Assefuah's employer, however.

Assefuah testified that he went to meet Respondent on Monday, July 21, 2014, as they had discussed, but Respondent did not appear. After waiting more than a half an hour, he finally reached Respondent on the telephone. Respondent was in California. Assefuah did not remember Respondent telling him that he was leaving town, but Respondent assured him that he would return to Denver in a day or two and would call him when he arrived. Respondent denies scheduling a meeting for July 21.

Assefuah was then unable to reach Respondent until Friday, July 24, 2013, when Respondent still had not returned to Colorado. While speaking to Respondent on the telephone, Assefuah testified, Respondent instructed him to download the Colorado worker's compensation claim form online. Assefuah did so, but did not have all the information needed to fill out the form. Assefuah said he spoke with Respondent a second time that evening around 5:00 p.m., and Respondent tried to assist him to fill out the claim form, but he too was missing information because Assefuah's file was in Colorado. Additionally, Assefuah was having technical problems, and they were unable to complete the claim form over the phone. Assefuah said that Respondent vowed to return to Colorado

over the weekend, call him, and fill out the claim form then. Assefuah sent Respondent an email at 8:41 p.m. that evening, attaching the blank claim form.[111]

Respondent gave a somewhat different account of that phone call. He stated that Assefuah asked him to help him fill out the form—a task that was not part of the original scope of representation. He agreed to help him, and instructed him to download the proper form from the internet. According to Respondent, he helped Assefuah understand what was needed on the form and also told him where to mail it. Respondent did not respond to Assefuah's email with the blank form, and he said that he never promised to call Assefuah when he returned to Denver because, as far as he was concerned, his representation had been completed.

On Monday, July 28, 2014, after hearing nothing from Respondent, Assefuah met with attorney James Olson about his worker's compensation claim. Olson agreed to represent Assefuah on a contingency fee basis. During that meeting, Olson successfully filled out Assefuah's claim form in about fifteen minutes, and then filed the form.

Olson testified that the worker's compensation claim form is a standard form in approximately forty to fifty percent of his worker's compensation cases. This form is required to receive a worker's compensation claim number from the State of Colorado. Olson said this form does not need to be filled out by a lawyer and it is not necessary to have medical records available when completing the form. Olson opined that it would be highly unusual for an employer to fill out a claim form on behalf of a client. After the meeting with Olson, Assefuah told Respondent that he no longer needed to file the claim form because he had settled his case.[112]

The next day, Assefuah asked Respondent when he could retrieve his file, and later that week he asked Respondent for a refund and for his file.[113] Respondent told Assefuah that he would give his file to Assefuah's new attorney and asked for the attorney's contact information.[114] Respondent testified that he was willing to return Assefuah's file, but he was never contacted by Assefuah's new attorney.

Olson recalled that Assefuah's case was ultimately contested by his employer, which necessitated filing an application for a hearing to get the case moving. He said that he spent approximately ten hours on Assefuah's entire case, which eventually settled over a year later for $12,000.00.

In late 2014, Respondent received a request for investigation from the People.[115] Respondent responded by letter dated November 28, 2014.[116] Attached to the letter was a

[111] Ex. S28.
[112] Ex. S34 at 000030.
[113] Ex. S34 at 000032.
[114] Ex. S34 at 000032.
[115] *See* Ex. S36.
[116] Ex. S36.

billing time sheet, which Assefuah saw for the first time during the People's investigation. The billing sheet indicated that Respondent spent a total of seven and a half hours on Assefuah's matter on the following tasks:

07/14/2014	Telephone contact regarding WC filing	00.75
07/15/2014	Telephone and text communication	00.25
07/16/2014	Meeting at 12963 Elgin Place, Denver	02.00
07/16/2014	Setup file, review documents, research WC issue	02.50
07/17/2014	Telephone contact with employer	00.25
07/18/2014	Telephone contact with employer	00.25
07/21/2014	Telephone contact with employer	00.25
07/23/2014	Telephone contact with employer	00.25
07/24/2014	WC form preparation by telephone	01.00
Total hours		07.50[117]

Respondent's bill included a balance of $700.00 that Assefuah allegedly owed.[118]

Respondent testified that his billing sheet is reflective of the time he spent on each task, which he believed was reasonable because he gave Assefuah excellent representation. He also stated that his minimum billing rate for voicemail messages is fifteen minutes, and although he does have a sheet indicating his rates for certain tasks, he does not recall providing one to Assefuah. Respondent testified that he employs no staff, and his clients know that he bills them for setting up their file. He also opined that billing one hour for assisting Assefuah with filing out the claim form was reasonable because he was not experienced in worker's compensation and it was difficult to communicate with Assefuah. He stated that even though his bill carried a balance of $750.00, he never intended to charge Assefuah more than $800.00. He merely wanted to show Assefuah the value he received. He did not refund Assefuah's money, he stated, because he earned the $800.00 by completing the tasks he was hired to perform.

Colorado worker's compensation attorney Clifford Eley testified at the hearing about the reasonableness of Respondent's attorney's fees. Eley has practiced solely in the area of worker's compensation for over thirty-three years. Eley opined that billing Assefuah two-and-a-half hours for setting up the file, research, and review of documents was patently unreasonable. First, setting up a file is an administrative task, and attorneys should not bill clients for this undertaking. Second, the research that Respondent completed, in Eley's opinion, included only the fundamental worker's compensation statutes—the basic tenets of worker's compensation law.[119] Every lawyer who practices worker's compensation law should be aware of these statutes, according to Eley, and should not charge for this research. Last, Assefuah gave Respondent only generic medical documents at their first

[117] Ex. S37. Respondent testified that the entry dated "07/24/2014" was misdated and should read "07/25/2014."
[118] Ex. S37.
[119] *See* Ex. S27 (research from Respondent's case file).

meeting and these items should not have taken long to review, stated Eley. These documents are given to all patients, they included no information about Assefuah's injury or surgery, and they contained only one or two references to Assefuah's ability to return to work.[120] Eley thought this task could have been accomplished in less than twenty minutes.

Eley also believed that billing one hour to leave four voicemail messages was excessive because Respondent did not speak with anyone. Further, Eley thought that charging one hour to prepare the worker's compensation claim form—a form that ultimately was not prepared or filed by Respondent—was unreasonable. In his experience, this form takes about ten to twenty minutes to complete. If it takes longer, either the claim is complicated or the attorney is inexperienced.

In this matter, the People contend that Respondent committed four violations of the Rules of Professional Conduct in this matter. We conclude that the People have met their burden by clear and convincing evidence as to all four claims.

We first determine that Respondent transgressed Colo. RPC 1.3, which requires a lawyer to act with reasonable diligence and promptness when representing a client. Respondent assisted Assefuah with his claim for a total of twelve days. We credit Assefuah's testimony regarding the scope of Respondent's representation. During those twelve days Respondent did not accomplish the tasks for which he was hired—to send a letter to Assefuah's employer and to file the worker's compensation claim form. Respondent never spoke with Assefuah's employer, and he failed to prepare and file his claim form. Olson testified that the claim form should have been filed right away in order to receive a claim number. Both Olson and Eley opined that this form would take an experienced practitioner no more than fifteen minutes to complete. Respondent's inability to file this form within twelve days evidences a lack of any reasonable diligence.[121]

Next, we find that Respondent contravened Colo. RPC 1.5(a) when he collected $800.00 for his services. It was unreasonable for Respondent to charge Assefuah for tasks necessitated by his own inexperience, such as completing rudimentary legal research of worker's compensation statutes.[122] As Eley and Olson attested, the statutes Respondent printed for his files were not reflective of a novel issue in Assefuah's case but rather were statutes with which every competent worker's compensation lawyer is familiar. We also agree with Eley's assessment of Respondent's charges for setting up the file and reviewing documents. It is not reasonable for Respondent to charge his client for a purely

[120] *See* Ex. S26.

[121] *See People v. Titoni*, 893 P.2d 1322, 1322-23 (Colo. 1995) (agreeing that an attorney lacked diligence where he agreed to represent a criminal defendant in an appeal but completed no work on the case); *In re Weaver*, 281 P.3d 502, 520 (Kan. 2012) (finding a lack of diligence where a lawyer formed a loan modification business and solicited and collected retainer fees from clients but did nothing to provide them with legal services).

[122] *See e.g., Att'y Grievance Comm'n v. Manger*, 913 A.2d 1, 5 (Md. 2006) ("While it may be appropriate to charge a client for case-specific research or familiarization with a unique issue involved in a case, general education or background research should not be charged to the client.").

administrative task such as setting up a client file,[123] nor was it reasonable for Respondent to charge any more than a half an hour to review the generic medical records given to him by Assefuah. We also find that charging Assefuah one hour for leaving four voicemail messages to be excessive and thus unreasonable. While it may have been necessary for Respondent to spend time preparing for the first call, it was not necessary to bill Assefuah for all four unsuccessful calls. Finally, we conclude that billing Assefuah one hour for preparing his worker's compensation form by telephone was unreasonable. The evidence demonstrates that this task was never completed and thus provided no value to Assefuah.[124] Of note, Respondent told Assefuah that it would take him only four hours to complete any work on his case. Yet according to Respondent's billing statement, he had already performed five-and-a-half hours of work by July 16, 2014—the night of their first meeting, and then billed Assefuah an additional two-and-a-half hours after that date. Simply put, charging Assefuah for not completing the tasks for which he was retained was patently unreasonable.

Respondent also violated Colo. RPC 1.15A, which requires a lawyer to hold client funds separate from the lawyer's own funds. Respondent placed Assefuah's $800.00 retainer into his operating account after receiving the funds on July 16, 2014. The earliest he could have deposited the money was on July 17. For this to be permissible, Respondent would have needed to perform four hours of work by July 17, 2014. We conclude that he did not. Although his billing statement indicates that he performed five-and-a-half hours of work by this date, we have determined that many of these fees were unreasonable and should not have been billed. Even assuming that Respondent could reasonably have charged Assefuah thirty minutes for reviewing generic medical records, Respondent would have been entitled to, at most, $700.00 by July 16, 2014. The remaining $100.00 should have been placed into trust until Respondent earned those funds. He may have earned an additional $50.00 on July 17, 2014, by leaving Assefuah's employer a voicemail message and preparing for that call. Accordingly, Respondent negligently converted $50.00 to $100.00 of Assefuah's funds when he commingled this money with his own.

Finally, by refusing to communicate with Assefuah after learning that he had retained other counsel and by refusing to return his file until the People initiated an investigation, Respondent transgressed Colo. RPC 1.16(d), which requires a lawyer to take reasonable

[123] *See In re Green*, 11 P.3d 1078, 1088 (Colo. 2000) (holding that charging a lawyer's hourly rate for faxing documents, calling court clerk's office, and delivering documents to opposing counsel is unreasonable as a matter of law); *Hermida v. Archstone*, 950 F. Supp. 2d 298, 311 (D. Mass. 2003) (finding administrative or clerical tasks such as organizing, distributing, or copying documents may not be billed at a lawyer's own rate even if the lawyer performs the tasks).

[124] *See People v. Boyle,* 942 P.2d 1199, 1202 (Colo. 1997) (finding that by collecting payment for work that provided no benefit to the client, the attorney charged an unreasonable or clearly excessive fee); *Att'y Grievance Comm'n v. Guida*, 891 A.2d 1085, 1096-97 (Md. 2006) (finding that a $735.00 fixed fee to represent a client in an adoption proceeding would have been reasonable had the lawyer performed the services).

steps to protect a client's interest, such as surrendering paper or property to which the client is entitled.[125]

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[126] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[127] When imposing a sanction after a finding of lawyer misconduct, a hearing board must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the lawyer's misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

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

Duty: Respondent disregarded duties he owed to his clients to provide competent representation, to act with diligence, and to communicate with them about their cases. He ignored his mandate to keep unearned client funds separate from his own. Respondent also shirked the duty he owed as a professional when he charged Orozco-Vasquez and Assefuah unreasonable fees and neglected to return Assefuah's file when the representation had terminated.

Mental State: We find that Respondent acted negligently when he commingled his clients' funds with his own by depositing them into his operating account upon receipt. We find that Respondent acted knowingly, however, with respect to all of his other misconduct.

Injury: Although Respondent failed to sufficiently advise Ward of the adverse consequences his trip to Ghana might have upon Ward's case, that failure did not cause Ward any actual harm. It did, however, have the potential to delay Ward's preliminary hearing and his right to a speedy trial for more than two months. Orozco-Vasquez testified that Respondent's conduct has eroded her trust in attorneys. He gave her false hope and empty promises about obtaining a green card and seeing her family again in Mexico. She is concerned that another attorney will try to take advantage of her situation, as Respondent did. Although her immigration status is the same today as it was when she first hired Respondent in 2012, she paid him $3,500.00 in attorney's fees and filing costs and received no benefit in return, causing her financial injury. Likewise, Respondent deprived Assefuah of $800.00 when he failed to complete tasks for which Assefuah paid him. Even though Assefuah was able to retain new counsel to file his claim, Respondent's conduct had the potential to delay the processing of Assefuah's claim. Finally, Respondent caused all three of his clients potential injury when he negligently converted their funds.

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[125] *See People v. Crews*, 901 P.2d 472, 474 (Colo. 1995) (finding a violation of Colo. RPC 1.16(d) where an attorney failed to return a client's file to new counsel in a timely manner after the representation had terminated).
[126] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).
[127] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

ABA *Standards* 4.0-7.0 – Presumptive Sanction

Suspension is the presumptive sanction for Respondent's misconduct in each client matter, as set forth in several ABA *Standards*. The Hearing Board looks to ABA *Standard* 4.42, which governs Respondent's failure to represent Assefuah with diligence and his failure to sufficiently explain matters to Ward and Orozco-Vasquez. That standard provides for suspension when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect and causes injury or potential injury to a client. Under ABA *Standard* 4.52, suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent and causes injury or potential injury to a client, as Respondent did in the Orozco-Vasquez matter. ABA *Standard* 7.2 is implicated by Respondent's failure to charge Orozco-Vasquez and Assefuah reasonable fees. That standard suggests suspension as a presumptive sanction when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. Finally, under ABA *Standard* 4.13, public censure is generally appropriate when a lawyer negligently handles client property and causes injury or potential injury to a client.

ABA *Standard* 8.2 calls for suspension when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. As discussed in detail below, Respondent has previously received a private admonition, a public censure, a one-year period of probation, and a ninety-day suspension.[128]

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of the sanction to be imposed, while mitigating circumstances may

[128] The People argue that Respondent's 2010 suspension for ninety-days implicates ABA *Standard* 8.1(b), which calls for disbarment when a lawyer has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. We choose not to apply this standard here, however, because we find that the conduct for which Respondent was suspended in 2010 is not sufficiently similar to the conduct charged in this case. In 2010 Respondent incompetently represented his client in a civil rights matter. His incompetence stemmed largely from procedural transgressions. *See* Ex. 3. Unlike in that case, here we have found Respondent to be incompetent while representing a client in an immigration case based on his fundamental misunderstanding of the governing law. We do determine, however, that Respondent's prior admonitions, censure, and probation have been ineffective in bringing an end to his unethical conduct. Accordingly, in light of Respondent's record of misconduct, we choose to start our analysis with suspension as the presumptive sanction, noting that a significant suspension is needed to adequately protect the public. To allow Respondent to reenter the practice of law without some adequate assurance that he understands the gravity of violating his duties of competence, diligence, and communication would be to abandon our role in protecting future consumers of legal services. *See In re Johanning,* 254 P.3d 454, 555 (Kan. 2011) (imposing indefinite suspension on an attorney who mishandled client funds and who had previously received censures and probation for the same misconduct); *In re Tapia*, 777 P.2d 378, 380 (N.M. 1989) (imposing an indefinite suspension for a minimum of two years where an attorney was reprimanded yet continued to engage in similar misconduct).

warrant a reduction in the severity of the sanction.[129] Respondent introduced little evidence in support of mitigating factors at the disciplinary hearing.[130] As explained below, we consider seven aggravators and no mitigating factors in deciding the appropriate sanction.

Prior Disciplinary Offenses – 9.22(a): Respondent has been disciplined on five other occasions.[131]

- In 1994, Respondent received a letter of admonition for failing to associate with or consult with a domestic relations attorney so that he could provide his client with competent representation, neglecting to return his client's phone calls and letters, and failing to place an unearned retainer into a trust account, in violation of Colo. RPC 1.1, 1.4, and 1.15(a).[132]

- In 1997, Respondent received a second private admonition for violating the confidentiality provisions of C.R.C.P. 241.24 as they pertained to disciplinary proceedings and for engaging in conduct prejudicial to the administration of justice in violation of Colo. RPC 8.4(d). There, Respondent had engaged in attempts to convince a complaining party to withdraw a grievance.[133]

- On May 14, 2004, Respondent stipulated to a thirty-day suspension, all stayed upon the successful completion of a one-year probation. In that matter, Respondent's lack of diligence and neglect in a civil case led to a default judgment being entered against his client. He also failed to communicate with his client and continued to represent his client despite a conflict of interest. He stipulated to violations of Colo. RPC 1.3, 1.4(a) and (b), and 1.7(b).[134]

- On June 9, 2009, Respondent stipulated to a public censure for causing substantial delays and incompetently representing a criminal client in an appeal. His conduct violated Colo. RPC 1.1 and 1.3.[135]

- Respondent stipulated to a ninety-day suspension on July 28, 2010, for his conduct in two client matters. In the first matter, he caused delays in his client's civil rights suit, leading to its dismissal for failure to prosecute. He also incompetently represented his client and engaged in conduct prejudicial to the administration of justice in violation of Colo. RPC 1.1 and 8.4(d). In the second client matter, Respondent delayed the proceedings by seeking numerous continuances of his criminal client's sentencing hearing, knowingly

[129] *See* ABA *Standards* 9.21 & 9.31.
[130] Respondent was precluded from calling any character witnesses at the hearing, as these witnesses were untimely disclosed to the People.
[131] *See* Ex. 3 (filed under seal).
[132] Ex. 3.
[133] Ex. 3.
[134] Ex. 3.
[135] Ex. 3.

disobeyed the rules of the tribunal by failing to file a court-ordered notice, and engaged in conduct prejudicial to the administration of justice. He agreed that this conduct contravened Colo. RPC 1.16(d), 3.4(c), and 8.4(d).[136]

We are exceedingly troubled that Respondent has once again breached his ethical obligations after having received private discipline in two other cases and public discipline in three cases. We also acknowledge that at least one of his past infractions—the private admonition in 1997—bears no similarity to his conduct at issue in this case. The rest of his disciplinary history, however, and in particular the more recent offenses in 2004, 2009, and 2010, are replete with offenses similar to those with which he is charged here. All told, Respondent has been disciplined twice for failing to reasonably communicate with clients, once for failing to safeguard client funds, twice for incompetence, and twice for lack of diligence. The Hearing Board accords substantial weight in aggravation to Respondent's 1997, 2004, 2009, and 2010 offenses due to their relative recency and their resemblance, in part, to his misconduct here.[137]

Pattern of Misconduct – 9.22(c): In both the Orozco-Vasquez and Ward matters, Respondent failed to communicate with his clients. In all three client matters he negligently converted his clients' fees and failed to maintain required accounting records. He also charged both Assefuah and Orozco-Vasquez unreasonable fees for work he either incompetently performed or failed to complete. Because Respondent engaged in a sustained course of similar misbehavior in all three of these cases, we find this factor applicable.

Multiple Offenses – 9.22(d): In three separate client matters, Respondent engaged in several distinct types of misconduct. We assign this aggravator significant weight in our sanctions analysis.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): The People ask for application of this aggravating factor because Respondent maintains that he did nothing wrong. While we recognize that Respondent has the right to mount a defense, he continues to maintain that he provided his clients with excellent and valuable representation despite charging for substandard legal services or services he did not complete. In fact, he attempted to bill his clients more than his agreed-upon rate in an effort to prove the worth

[136] Ex. 3.

[137] *See In re Fischer,* 89 P.3d 817, 822 (Colo. 2004) (finding that a letter of admonition issued ten years earlier for unrelated negligence was an aggravating factor, and citing *People v. Pittam*, 889 P.2d 678, 680 (Colo. 1995) ("While the previous suspension was seventeen years ago, *cf.* ABA Standards 9.32(m) [ ], the dishonesty at the heart of that offense, and of the present offense, is extremely troubling.")); *People v. Barber,* 799 P.2d 936, 941 (Colo. 1990) (considering four earlier offenses, the first of which was eleven years prior to the commencement of representation and at least thirteen years prior to the disciplinary hearing); *People v. Good*, 790 P.2d 331, 332 (Colo. 1990) (considering misconduct occurring fifteen to twenty years before the disciplinary proceeding, involving same type of allegations, as relevant to the discipline to be imposed); *In re Jones*, 951 P.2d 149, 152 (Or. 1997) (emphasizing the importance of applying this factor when there is similarity between the prior offense and the offense in the case at bar).

of his services, and refused to refund any of their funds. Thus, we apply this factor in aggravation.

Vulnerability of Victim – 9.22(h): Orozco-Vasquez was an immigrant without legal status in the United States, she had very little education, and her communication skills were limited.[138] We thus consider her a vulnerable victim. We likewise find Assefuah, an immigrant with a limited grasp of the English language and worker's compensation claims, to be a vulnerable victim.

Substantial Experience in the Practice of Law – 9.22(i): Respondent has been a lawyer licensed in Colorado since 1990. As a longstanding practitioner, he should have been well-accustomed to keeping client funds separate from his own, maintaining adequate accounting records, and effectively communicating with and representing clients. He also should have been aware of the limits of his own competence.

Indifference to Making Restitution – 9.22(j): Respondent refused to refund any money to his clients, and in all cases he determined that his clients owed him additional fees for his work. In our view, Respondent should have returned $3,500.00 to Orozco-Vasquez. He likewise should have returned to Assefuah the full $800.00 retainer, because he did not perform any work that he was hired to complete.

Absence of a Dishonest or Selfish Motive – 9.32(b): Although Respondent seeks application of this factor in mitigation, we do not believe that Respondent acted without a selfish motive when he charged unreasonable fees and negligently commingled his clients' unearned funds with his own.

Personal or Emotional Problems – 9.32(c): At the hearing, Respondent presented testimony that he was unable to respond appropriately to the People's requests for certain records during their investigation because he was in the throes of his divorce and unable to access his home office. He also stated that his ex-wife ransacked his client files. He further contended that his father's health problems played a factor in his misconduct. After additional inquiry by the People, Respondent admitted on cross-examination that his divorce in 2015 did not prevent him from accessing his client files from his home office in 2014. He also stated that his father's health did not take a turn for the worse until 2015. His misconduct in these three cases occurred from 2012 to 2014. Thus, we decline to credit this factor in mitigation.

Full and Free Disclosure to Disciplinary Board or Cooperative Attitude Toward Proceedings – 9.32(e): Respondent contends that this factor applies here, but we disagree.

[138] *See Cincinnati Bar Ass'n v. Sigalov*, 975 N.E.2d 926, 940 (Ohio 2012) (noting that "immigration clients often have a heightened susceptibility to attorney misconduct due to language barriers and unfamiliarity with the legal system"); *Flowers v. Bd. of Prof'l Responsibility*, 314 S.W.3d 882, 899-900 (Tenn. 2010) (observing that immigration clients often have limited communication skills, face difficult personal circumstances, and are "seeking assistance in a particularly weighty matter").

Respondent presented no evidence of his full and free disclosure or cooperative attitude and the People do not concede application of this factor. Indeed, Respondent did not provide the People with the documents they requested during their investigation even though he had access to those files. He also offered inconsistent accounts concerning his conduct in the Orozco-Vasquez matter.

Character or Reputation – 9.32(g): Respondent was precluded from offering character witnesses in this proceeding because his witnesses were untimely disclosed. The only other evidence he offered concerning his character was his own statement that he believed he has a "high" reputation as a lawyer in Denver. This is not sufficient evidence to warrant the application of this factor.

Remorse – 9.32(l): Respondent contends that he is remorseful for his conduct yet he maintained at the hearing that he provided each of his clients with excellent legal services and professed that Ward was better off after speaking with Respondent about his case. He expressed some recognition of his misunderstanding of the relevant legal principles in Orozco-Vasquez's case but articulated no regret for charging her to file the I-130 petition or the I-485 application, which provided her with no benefit. We decline to apply this factor in mitigation.

Remoteness of Prior Offenses – 9.32(m): We decline to find that the remoteness of Respondent's 1997 discipline serves as mitigation. His conduct for which he was privately admonished is substantially similar to his misconduct here.[139]

Analysis Under ABA *Standards* and Colorado Case Law

The Colorado Supreme Court has directed the Hearing Board to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors.[140] We are mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[141] Though prior cases are helpful by way of analogy, hearing boards must determine the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

Here, the People ask the Hearing Board to impose a substantial multi-year served suspension or even disbarment for Respondent's misconduct. Respondent himself suggests

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[139] *See State ex rel. Counsel for Discipline v. Ellis*, 808 N.W.2d 634, 642 (Neb. 2012) (finding that prior discipline in 2003 resulting in a suspension was not too remote in time to be considered an aggravating factor in the instant case, where the prior misconduct was similar to the current charges); *In re Disciplinary Proceeding Against Cohen*, 67 P.3d 1086, 1094 (Wash. 2003) (declining to consider remoteness of prior similar disciplinary offenses as mitigating and considering thirty- and ten-year-old admonitions and reprimands for similar misconduct in aggravation).

[140] *See In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *In re Fischer*, 89 P.3d at 822 (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).

[141] *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

public censure as the appropriate discipline, if any, or a suspension lasting less than a year. In the cases cited by the People, the Colorado Supreme Court has imposed both short and substantial periods of suspension for similar misconduct. For instance, a one-year-and-one-day suspension was imposed in *People v. Dunsmoor*, where the attorney engaged in a pattern of neglect in two marriage dissolution actions, a personal injury action, and a federal habeas corpus case.[142] The attorney's misconduct was aggravated by four letters of private admonition but three mitigating factors were present.[143] In *People v. Williams*, the Colorado Supreme Court expressed reservations over the lenient sanction recommended by the hearing panel yet approved the six-month suspension with the requirement of reinstatement under C.R.C.P. 251.29(c), including conditions, for an attorney who engaged in continued and chronic neglect of three separate legal matters.[144] There, the attorney's conduct caused potential injury in all three cases, and his conduct was aggravated by six factors—five of which are present here—and mitigated by his lack of prior discipline.[145]

The Colorado Supreme Court approved a one-year-and-one-day suspension for an attorney's serious neglect of two client matters in *People v. Rishel*.[146] In that case, the attorney represented one client in a child custody and support case.[147] The client had trouble communicating with the lawyer, and after the attorney failed to notify the client of an upcoming hearing, the client retained new counsel.[148] In a second case, the attorney agreed to represent his client in a bankruptcy case but then moved out of state.[149] He promised to return the client's file, send him an itemized bill, and refund unearned fees, but he did not do so.[150] The Colorado Supreme Court imposed the one-year-and-one-day suspension after applying eight factors in aggravation and one in mitigation.[151] In *People v. Calvert*, suspension of one year and one day was levied when an attorney neglected two legal matters, charged excessive fees, and commingled his own funds and client funds over a three-year period.[152]

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[142] 807 P.2d 561 (Colo. 1991).
[143] *Id*. at 562.
[144] 824 P.2d 813, 814-15 (Colo. 1992).
[145] *Id*.; *see also People v. Proctor*, 922 P.2d 931, 932-33 (Colo. 1996) (suspending an attorney for six months for neglecting and incompetently handling a client's criminal matter, causing significant actual injury, where the attorney had no prior discipline); *People v. Dash*, 811 P.2d 36, 38 (Colo. 1991) (suspending an attorney for three years where the attorney's misconduct involved an extensive and longstanding pattern of neglect and misrepresentation in client matters and grievance proceedings, but was mitigated by emotional problems and absence of prior discipline); *People v. Mayer*, 744 P.2d 509, 511 (Colo. 1987) (imposing a six-month suspension with the requirement of formal reinstatement proceedings on an attorney who engaged in a pattern of neglect and had a history of similar misconduct).
[146] 956 P.2d 542, 544 (Colo. 1998).
[147] *Id*. at 542.
[148] *Id*. at 542-43.
[149] *Id*. at 543.
[150] *Id*.
[151] *Id*.
[152] 721 P.2d 1189, 1190-91 (Colo. 1986).

The Colorado Supreme Court agreed that a lengthy suspension was appropriate, given the attorney's extensive disciplinary history and pattern of neglecting legal matters.[153]

Likewise, a technical conversion of client funds generally warrants a suspension. In *People v. Schaefer*, an attorney was suspended for two years for mishandling client funds.[154] There, the attorney had a prior disciplinary record, submitted false evidence at the hearing, refused to acknowledge his misconduct, had substantial experience as a lawyer, and refused to make restitution to his client for almost eighteen months after the representation terminated.[155] In *People v. Zimmermann*, an attorney was suspended for a year and a day when, for more than three years, he "consistently mismanaged his trust account, commingled funds that should have been deposited in either his trust or his operating account, improperly used clients' funds to pay for personal, office and client expenses, and made refunds of unused advance attorney fees from unrelated client funds" without authorization.[156]

Finally, the Colorado Supreme Court has imposed significant sanctions on attorneys who repeatedly commit similar misconduct. In *In re C de Baca*, an attorney was disbarred for engaging in misconduct while suspended.[157] The most important factor in determining the appropriate sanction in that case was the attorney's prior discipline, which included five admonishments, a public censure, a ninety-day suspension, and a two-year suspension.[158] Despite frequent opportunities for rehabilitation, the attorney continued to engage in misconduct, so disbarment was merited.[159] In *People v. Bottinelli*, the attorney made false accusations of conspiracy against judges and lawyers less than three months after his reinstatement following a six-month suspension for similar misconduct.[160] There, the Colorado Supreme Court commented that the lawyer's misconduct might have warranted mere suspension had he not previously engaged in the same type of misconduct.[161]

In this case, the presumptive sanction for Respondent's misconduct is suspension. The seven aggravating factors—notably Respondent's prior discipline—together with a lack

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[153] *Id.* at 1191-92.
[154] 938 P.2d 147, 150 (Colo. 1997).
[155] *Id.*
[156] 922 P.2d 325, 328 (Colo. 1996); *see also People v. Davis*, 893 P.2d 775, 775-76 (Colo. 1995) (suspending for 180 days a lawyer who commingled client and personal funds in a trust account and wrote forty-five insufficient-funds checks on the trust account over a one-year period, where two mitigators and one aggravator applied).
[157] 11 P.3d 426, 432 (Colo. 2000).
[158] *Id.*
[159] *Id.*
[160] 926 P.2d 553, 558-59 (Colo. 1996).
[161] *Id.*; *see also People v. Dolan*, 873 P.2d 766, 769 (Colo. 1994) (disbarring an attorney who neglected legal matters when the lawyer had an extensive history of discipline for similar misconduct); *People v. Cole*, 880 P.2d 158, 160 (Colo. 1994) (suspending for three years an attorney who engaged in a pattern of neglect and had a history of prior discipline); *People v. Honaker*, 863 P.2d 337, 340 (Colo. 1993) (suspending an attorney for three years for neglecting a legal matter where the lawyer had a history of similar discipline and engaged in a pattern of misconduct).

of mitigation counsel in favor of a significant served suspension, as does relevant Colorado case law, which supports an increase in sanctions for prior similar misconduct.[162] This is not a case, in our opinion, where the public could be adequately protected against Respondent's future misdeeds without him serving a meaningful period of suspension. We are concerned that during the course of Respondent's legal practice, he has engaged in an all-too-frequent pattern of neglect, incompetence, and inattention to his clients' cases. Permitting him to serve a short suspension or allowing him to reenter the legal profession without adequate assurances that he understands the gravity of his misconduct would fail to provide him and the legal profession any meaningful indication of the seriousness of continually engaging in this type of misconduct. For these reasons, we conclude that Respondent should be suspended for twenty-four months.

IV. CONCLUSION

Respondent engaged in a pattern of neglect and inattention when representing three individual clients. He failed to take adequate measures to ensure that Orozco-Vasquez understood and agreed to the legal strategy he had embarked upon. Nor did he ensure Ward understood how his trip to Ghana would affect his case. Moreover, Respondent charged Orozco-Vasquez and Assefuah an unreasonable legal fee yet provided them no legal benefit. He negligently mishandled his clients' funds and failed to keep accounting and billing records as mandated by the Rules of Professional Conduct. This misconduct warrants a suspension for twenty-four months.

V. ORDER

The Hearing Board therefore **ORDERS**:

1. **WAZIR-ALI MUHAMMAD AL-HAQQ**, attorney registration number 19900, is **SUSPENDED FOR TWENTY-FOUR MONTHS**. The **SUSPENSION SHALL** take effect only upon issuance of an "Order and Notice of Suspension."[163]

2. Respondent **SHALL** promptly comply with C.R.C.P. 251.28(a)-(c), concerning winding up of affairs, notice to parties in pending matters, and notice to parties in litigation.

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

[162] *See In re Bock*, 265 P.3d 552, 626-29 (Kan. 2011) (finding that a lawyer's extensive disciplinary history for the same misconduct supported an indefinite suspension under ABA *Standard* 8.2 and finding the suspension was also warranted under ABA *Standard* 9.22, where eleven aggravating factors, including prior discipline, applied).

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

4. Should Respondent wish to resume the practice of law, he will be required to file a petition for reinstatement under C.R.C.P. 2151.29(c).

5. The parties **MUST** file any posthearing motion or application for stay pending appeal with the Hearing Board **on or before Thursday, October 27, 2016**. Any response thereto **MUST** be filed within seven days.

6. Respondent **SHALL** pay the costs of these proceedings. The People **SHALL** submit a statement of costs **on or before Thursday, October 20, 2016**. Any response thereto **MUST** be filed within seven days.

7. Respondent **SHALL** pay restitution of $3,500.00 to Elisa Orozco-Vasquez and $800.00 to Ebenezer Assefuah **on or before Thursday, October 27, 2016**. His reinstatement to the practice of law is conditioned upon his full payment of restitution.

DATED THIS 6th DAY OF OCTOBER, 2016.

Original Signature on File
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Original Signature on File
PETER R. BORNSTEIN
HEARING BOARD MEMBER

Original Signature on File
JOHN M. LEBSACK
HEARING BOARD MEMBER

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