

Summary of Opinion. *People v. Bauer*, 99PDJ051, 5/22/00 Attorney Regulation.

The Presiding Disciplinary Judge and Hearing Board disbarred the respondent Richard B. Bauer for misappropriation of social security funds constituting grounds for discipline pursuant to C.R.C.P. 251.5(b) in violation of Colo. RPC 8.4(c) and commingling personal funds with trust account funds in violation of Colo. RPC 1.15(a). The respondent was ordered to pay the costs of these proceedings.

SUPREME COURT, STATE OF COLORADO

CASE NO.: **99PDJ051**

ORIGINAL PROCEEDING IN DISCIPLINE BEFORE
THE PRESIDING DISCIPLINARY JUDGE

OPINION AND ORDER IMPOSING SANCTIONS

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

v.

RICHARD B. BAUER,

Respondent.

Opinion issued by Presiding Disciplinary Judge Roger L. Keithley and Hearing Board members Lisa M. Wayne and Thomas C. Henley,
both members of the bar.

SANCTION IMPOSED: ATTORNEY DISBARRED

This matter was heard on February 2, 2000, before the Presiding Disciplinary Judge ("PDJ") and two Hearing Board members, Lisa M. Wayne and Thomas C. Henley, both members of the bar. Nancy L. Cohen, Deputy Regulation Counsel, represented the People of the State of Colorado (the "People"). Respondent did not appear either in person or by counsel.¹ The People's Exhibits 1 through 18 were admitted into evidence. The PDJ and Hearing Board heard testimony from the People's witnesses Deborah L. Ortiz,

¹ On January 26, 2000, counsel for respondent filed a Motion to Withdraw based on respondent's failure to communicate with his counsel. At the commencement of the hearing, the PDJ granted the motion. Prior to counsel for respondent's moving to withdraw, the parties stipulated to the People's Exhibits 1 through 17 and submitted a Stipulation of Facts. Exhibit 18 was offered during the hearing, consisting of a certified copy of Bauer's testimony during his immediate suspension hearing conducted on April 12, 1999, pursuant to C.R.C.P. 251.8(b)(3).

M. Kent Olsen, and David S. Wahl, M.D. The PDJ and Hearing Board considered the exhibits and the Stipulation of Facts submitted by the parties, assessed the credibility of the witnesses and made the following findings of fact which were established by clear and convincing evidence:

I. FINDINGS OF FACT

Richard Burton Bauer (“Bauer”) has taken and subscribed the oath of admission, was admitted to the bar of the Colorado Supreme Court on April 7, 1966, and is registered upon the official records of the Court, attorney registration number 01024. Bauer is subject to the jurisdiction of this court pursuant to C.R.C.P. 251.1(b). ²

Bauer has practiced law in Colorado for thirty-four years primarily in the areas of estate, probate and real estate law. On March 7, 1998, Joyce Bauer, respondent Bauer’s wife, passed away. Mrs. Bauer had been receiving \$1,063.00 in monthly social security benefits for five years prior to her death. Bauer was aware that his wife received Social Security Administration (“SSA”) benefit payments. Prior to her death, Mrs. Bauer had maintained two personal accounts at Colorado National Bank, n/k/a US Bank: a checking account and a money market account. Her social security payments were electronically transferred monthly from the SSA into her checking account. The monthly account summaries for the two accounts were provided to the account holder on the same statement.

During her last hospitalization, Mrs. Bauer directed Bauer to sign her name to checks drawn on her checking account to pay personal expenses and he did so.³ On the date of her death, Mrs. Bauer’s checking account was in an overdraft condition. Approximately one week later, on March 16, 1998, Bauer deposited \$100 from his law office trust account into Mrs. Bauer’s checking account to remedy the overdraft condition. At that time, Bauer knew there was less than \$100 in his deceased wife’s checking account.

Mrs. Bauer’s will designated Bauer as the personal representative, her sole beneficiary and surviving spouse. Bauer filed Mrs. Bauer’s original will with the clerk of the Jefferson County Clerk and Recorder’s Office but did not conclude her estate matters.

Although Bauer had advised clients in similar situations that the SSA must be notified of the death so as to terminate SSA benefits, Bauer did not notify the SSA of Mrs. Bauer’s death. He knew that until such time as the SSA was informed of Mrs. Bauer’s death, SSA would continue to send benefit payments. On May 22, 1998, Bauer submitted a small estate affidavit to the bank for the purpose of closing Mrs. Bauer’s money market account. At that

² Bauer was immediately suspended from the practice of law on May 13, 1999 by Order of the Supreme Court pursuant to C.R.C.P. 251.8 as a result of the conduct which forms the basis of the Complaint in this disciplinary action.

³ Bauer was not a signatory on Mrs. Bauer’s checking account and he did not obtain a power of attorney or court approval to sign her checks. He merely signed her name to the checks.

time, Bauer did not close the checking account into which the SSA payments were being electronically deposited. SSA continued to electronically transfer monthly payments into Mrs. Bauer's checking account.

Notwithstanding Bauer's knowledge that his wife's checking account contained less than \$100 following her death, between March 13, 1998 and November 30, 1998, Bauer wrote nine checks on his late wife's checking account made payable to himself in the total amount of \$7,175.00.⁴ Bauer signed his deceased wife's name to each of the nine checks. The funds removed from the account were used to pay personal expenses.

In November 1998, the SSA received notification of Mrs. Bauer's death. An SSA representative contacted Bauer on November 23, 1998 and advised him that the total amount paid by the SSA since Mrs. Bauer's death was \$8,504.00 and would have to be repaid. Bauer did not dispute the SSA's entitlement to a refund and remitted that amount to the SSA on the same day.

Bauer testified⁵ that during the eight month period following his wife's death, he never reviewed her account statements to determine whether there were sufficient funds in the account to cover the checks he wrote, nor was he aware of the source of the funds in the account. In light of Bauer's extensive probate and estate experience, his knowledge regarding the duties and responsibilities of personal representatives and the procedures necessary to close an estate, Bauer's testimony regarding the source and contents of the checking account is not credible.

Prior to her death, the Bauers had sold the marital home and Bauer deposited funds derived from that sale into his law office trust account. On or about June 5, 1998, Bauer sold a personal automobile and deposited the proceeds from that sale in the amount of \$20,000 into his law office trust account. At the time of these deposits, Bauer held client funds in his trust account.

II. CONCLUSIONS OF LAW

Claim I of the Complaint alleges that Bauer's actions amounted to knowing misappropriation of Social Security funds in violation of C.R.C.P.

⁴ Bauer signed his wife's name to the following checks after her death: Check no. 2327 on 5/14/98 in the amount of \$875.00; Check no. 2328 on 5/27/98 in the amount of \$300.00; Check no. 2329 on 5/30/98 in the amount of \$300.00; Check no. 2330 on 7/23/98 in the amount of \$1,000.00; Check no. 2331 on 8/20/98 in the amount of \$1,500.00; Check no. 2333 on 9/29/98 in the amount of \$300.00; Check no. 2334 on 9/29/98 in the amount of \$2,000.00; Check no. 2335 on 10/5/98 in the amount of \$300.00; Check no. 2336 on 11/30/98 in the amount of \$600.00.

⁵ Any reference to Bauer's testimony refers to that testimony set forth in Exhibit 18 given by him during the April 12, 1999, immediate suspension hearing.

251.5(a) and (b)⁶ and Colo. RPC 8.4(b) and Colo. RPC 8.4(c).⁷ Claim II alleges that Bauer's signing his late wife's name to checks drawn on her personal checking account constituted forgery in violation of C.R.C.P. 251.5(a) and (b) and Colo. RPC 8.4(b) and Colo. RPC 8.4(c). Claim III alleges that Bauer's deposit of personal funds, consisting of the proceeds of the sale of the martial home and a personal automobile, into his law office trust account which contained client funds constituted commingling, in violation of C.R.C.P. 251.5(a) and Colo. RPC 1.15(a).⁸

Claim I - Misappropriation of Social Security Funds

Joyce Bauer received monthly social security benefits in the amount of \$1,063.00 which were electronically transferred into her checking account at Colorado National Bank. After her death, Bauer wrote nine checks on his deceased wife's checking account totaling \$7,175.00 by signing her name to the checks. He was not a designated signatory on the account. Bauer cashed the checks which he had made payable to himself, and used the funds for personal expenses. Bauer claimed that he continued to write checks over a nine-month period without ever verifying that there were sufficient funds in the account. He also claimed that after his wife's death and prior to his closing of the account in November 1998, he was not aware that the funds in the checking account consisted almost entirely of social security benefits paid subsequent to his wife's death or of the balance in the account. Bauer was, however, aware that there was less than \$100 in the account a week after Mrs. Bauer's death.

⁶ C.R.C.P. 251.5 provides that misconduct by an attorney . . . including the following acts or omissions, shall constitute grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship: (a) Any act or omission which violates the provisions of the Code of Professional Responsibility or the Colorado Rules of Professional Conduct; (b) Any act or omission which violates the criminal laws of this state or any other state, or of the United States; provided that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of disciplinary proceedings . . .

⁷ C.R.C.P. 8.4 states that: It is professional misconduct for a lawyer to: (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

⁸ C.R.C.P. 1.15(a) provides: In connection with a representation, a lawyer shall hold property of clients or third persons that is in an attorney's possession separate from the attorney's own property. Funds shall be kept in a separate account maintained in the state where the attorney's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the attorney and shall be preserved for a period of seven years after termination of the representation.

Bauer's assertion that he simply wrote checks on the account without knowing the monthly balance or being in any way cognizant as to the origin of those funds lacks credibility. Bauer was an estate and probate lawyer having practiced in that area of the law for thirty-four years. Bauer knew that any authority granted to him by his wife during her lifetime to sign her name to checks expired upon her death.⁹ Bauer knew that any funds remaining in his wife's accounts, regardless of their source, did not belong to him until such time as the estate was properly administered pursuant to Colorado law. See §15-12-101 *et seq.*, 5 C.R.S. (1999). Even if Mrs. Bauer's estate qualified as a the small estate, Bauer knew the law required assets of the decedent to be marshaled and an inventory to be made as of the date of death in order to submit an affidavit to the bank to withdraw funds from her checking account. See §15-12-1201 *et seq.*, 5 C.R.S. (1999). Indeed, Bauer prepared a small estate affidavit and presented it to the bank in order to close the money market account. He did not, however, simultaneously submit a small estate affidavit to close the checking account. Rather, he continued to write checks with his reproduction of his wife's signature. Over the following eight months, Bauer wrote checks on that account totaling \$7,175, all of which were paid. Consequently, Bauer knew that funds were being deposited into that account from another source. He did not, however, according to his testimony, make any attempt to determine the source of those newly deposited funds after Mrs. Bauer's death.

Bauer knew that Mrs. Bauer's right to receive additional social security benefits expired upon the date of her death. 20 C.F.R. § 404.311(c) (2000). Bauer was aware that the SSA should be notified of the decedent's death. He acknowledged that any social security benefits received after the decedent's death should have been returned to the SSA. Indeed, he had advised clients in similar situations to notify the SSA of the decedent's death and/or return benefits paid.

Not having received timely notice of Mrs. Bauer's death, SSA continued for eight months to automatically deposit benefits to her account and Bauer continued to spend those funds for personal expenses. After mid-March 1998, the funds contained in that account consisted almost exclusively of social security benefits deposited by the SSA upon the assumption that Bauer's wife was still living.

Bauer's state of mind is a critical factor in determining whether his conduct violated Colo. RPC 8.4(c)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). In *People v. Varallo*, 913 P.2d 1, 11 (Colo. 1996) the Court stated:

⁹ Even if Bauer had a written power of attorney to withdraw funds from Mrs. Bauer's account while she was living, it expired upon her death. See §15-14-601 *et seq.*, 5 C.R.S. (1999).

Knowing misappropriation [for which the lawyer is almost invariably disbarred] "consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking." *In re Noonan*, 102 N.J. 157, 160, 506 A.2d 722 (1986).

Misappropriation includes "not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom." *In re Wilson*, 81 N.J. 451, 455 n. 1, 409 A.2d 1153 (1979). The motive of the lawyer is irrelevant in determining the appropriate discipline for knowing misappropriation. *Id.* at 11.

The facts of this case reflect that Bauer knowingly withdrew and expended funds which were not his. Until Bauer submitted a small estate affidavit to close the checking account, the funds contained in that account were not his to spend. More importantly, however, the funds were not estate funds, but, rather, were primarily funds belonging to the SSA which were erroneously deposited into Mrs. Bauer's checking account after her death because SSA had not been promptly notified. They were therefore funds belonging to the public. Indeed, Bauer's submission of the small estate affidavit to the bank on May 22, 1998, for the purpose of closing the money market account establishes that Bauer had marshaled and inventoried the estate assets. *See* §15-12-1201(a), 5 C.R.S. (1999). Bauer could not have executed the small estate affidavit until he had determined the value of the estate which, of necessity, would have required an examination of Mrs. Bauer's checking account. Even a cursory examination of the checking account would reveal the continuing receipt of the improper SSA payments. Such an examination, which the small estate affidavit reflects Bauer conducted, establishes the requisite proof of knowledge required by *Varallo*. Bauer's conduct constitutes knowing misappropriation of funds belonging to another, a violation of Colo. RPC 8.4(c)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

Claim I also alleges that Bauer's conduct constitutes a violation of Colo. RPC 8.4(b)(commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness) for which C.R.C.P. 251.5(b)(any act or omission which violates the criminal laws of this state or any other state or of the United States) provides grounds for discipline. Claim I does not state with specificity, however, which criminal law statutory provision Bauer is alleged to have violated. *See* C.R.C.P. 251.14 and C.R.C.P. 9(i). Merely stating that he has violated a "criminal law" or committed "forgery" is insufficient notice of the crime alleged. *See In the Matter of Andrew L. Quiat*, 979 P.2d 1029, 1037 (Colo. 1999)(citing *People v. Emeson*, 638 P.2d 293, 294 (Colo. 1981) and holding that under a due process rationale the charges contained in the formal complaint circumscribe the scope of the disciplinary proceedings); *People v. Chastain*, No.

GC98A53, slip op. at 5-6 (Colo. P.D.J. August 11, 1999), 28 COLO. LAW. 137, 138 (October 1999). *See also, In re Chandler*, 641 N.E. 2d 473, 478 (1994)(stating that “[g]enerally, an attorney may not be disciplined for instances of uncharged misconduct; to do so would violate the respondent’s right to procedural due process and our own notions of candor and fairness.”). Accordingly, the Complaint does not provide the requisite notice to Bauer to support a finding of a violation of Colo. RPC 8.4(b) nor to conclude that C.R.C.P. 251.5(b) authorizes the imposition of discipline in this case and those charges are dismissed with prejudice.

The allegation that C.R.C.P. 251.5(a) provides grounds for discipline, however, does identify the individual rules contained within the Rules of Professional Conduct which it is alleged that Bauer violated. Consequently, having concluded that Bauer violated the Colo. RPC 8.4(c), C.R.C.P. 251.5(a) does provide grounds for discipline.

Claim II - Forgery

Claim II of the Complaint alleges that by signing his late wife’s signature to checks drawn on her checking account, Bauer engaged in conduct “tantamount to forgery” in violation of Colo. RPC 8.4(b)(committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects) and Colo. RPC 8.4(c)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), constituting grounds for discipline under C.R.C.P. 251.5(a) and (b). As in Claim I, however, the Complaint does not provide, in connection with the Colo. RPC 8.4(b) alleged violation, sufficient notice to the respondent of the specific criminal law statutory provision that Bauer allegedly violated. *See Quiat*, 979 P.2d at 1037; *Emeson*, 638 P.2d at 294; *Chastain*, No. GC98A53, slip op. at 5-6, 28 COLO. LAW. at 138; *Chandler*, 641 N.E. 2d at 478. Accordingly, C.R.C.P. 251.5 (b) does not provide grounds for discipline under the allegations set forth in Claim II of the Complaint and the alleged violation of Colo. RPC 8.4(b) is dismissed with prejudice.

After Mrs. Bauer’s death, each time Bauer signed her name to a check and presented it for payment, he represented to the bank which held the funds that Mrs. Bauer was alive and that he had continuing authority to place her name on the checks. Both representations were material and false. Bauer knew they were false, knew the bank would act upon the false information, and intended that the bank do so. The bank relied upon the false representations and damage resulted. *See People v. Jackson*, 943 P.2d 450, 456 (Colo. 1997)(disbarring the attorney for submitting fraudulent documents to a lender with the intention of inducing the lender to lend money, resulting in the lender’s relying on the fraudulent representations). Bauer’s placement of his deceased wife’s signature on checks drawn on her account was both dishonest

and a misrepresentation by him to the bank. It is misconduct separate and distinct from the misappropriation of the SSA funds although arising from the same actions. It therefore constitutes a separate violation of Colo. RPC 8.4(c).

Claim III - Commingling

In June 1998, Bauer deposited the proceeds from the sale of a personal automobile in the amount of approximately \$20,000.00 and the proceeds from the marital home in his law office trust account. At the time he deposited the proceeds, he retained client funds in that account. Consequently, he commingled personal funds with funds belonging to his clients and held by him in violation of Colo. RPC 1.15(a) (a lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property).¹⁰

III. SANCTION/IMPOSITION OF DISCIPLINE

The PDJ and Hearing Board found that Bauer's conduct constituted a violation of duties owed both to the profession and to the public. ABA *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) ("ABA *Standards*") is the guiding authority for selecting the appropriate sanction to impose for lawyer misconduct.

ABA *Standard* 5.11 provides:

Disbarment is generally appropriate when:

- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Bauer's conduct meets the criteria under ABA *Standards* 5.11(b). The presumptive sanction for knowing misappropriation of the property of another is disbarment. In *People v. Loseke*, 698 P.2d 809, 810 (Colo. 1985) the attorney was disbarred for forging bank guaranty letters and knowingly, with intent to defraud, making, drawing, and issuing certain obligations of bank. In *People v. Salazar*, 524 P.2d 298, 299 (1974) the Supreme Court disbarred an attorney who used his position as a director of a bank to arrange financial transactions in a manner prohibited by law. The Court stated:

¹⁰ The scope of C.R.C.P. 1.15(a) is defined by the first words to the rule, "[i]n connection with a representation." In the present case, Bauer commingled personal funds with the funds of his clients. Bauer deposited personal funds with the funds belonging to his other clients in the course of representing them; therefore the facts of this case are sufficient to constitute a violation of the rule.

Attorneys who deal with . . . money of the public, whether in their professional capacity or in their private capacity, must govern their action in accordance with the highest standards of morality. Violation by attorneys of laws intended for the protection of the public or misapplication by them of funds in violation of the law, whether or not a loss results in the last analysis, constitutes conduct involving moral turpitude. *Id.* at 299.

In the present case, the funds misappropriated by Bauer for his own use belonged to the public, which were held by the SSA. Case law upholds the sanction of disbarment for such conduct, regardless of whether the conduct involves the attorney's client or a third party. *See People v. Motsenbocker*, 926 P.2d 576, 577 (Colo. 1996)(disbarring attorney pursuant to conditional admission of misconduct for the attorneys' misappropriation of bar association funds in the amount of \$2,350 while serving as treasurer even though attorney repaid funds and other mitigating factors were present); *People v. Rice*, 728 P.2d 714, 715 (Colo. 1986) (disbarring attorney for practicing while under suspension and for the felony of forgery based on forging his deceased mother's name to several of her social security checks); *In the Matter of I. Walter Gross*, 458 N.Y.S. 2d 366, 367 (1983)(disbarring attorney for forging deceased father's name on a series of pension checks issued by the New York State Retirement System).

Bauer's commingling of funds would ordinarily warrant substantially lesser discipline or, under certain facts, even diversion under C.R.C.P. 251.13, and, in light of the much more egregious conduct of knowing misappropriation, adds nothing to the sanction in this case. *See In re Nangle*, 973 P.2d 1271, 1272 (Colo. 1999)(approving the parties' conditional admission of misconduct and suspending the attorney in reciprocal discipline proceeding for one year and one day where attorney commingled client funds with professional, corporate, and private funds); *People v. Calvert*, 721 P.2d 1189, 1191 (Colo. 1986) (attorney suspended for one year and one day for commingling funds in trust account).

The PDJ and Hearing Board considered aggravating factors pursuant to ABA *Standards* 9.22. Bauer had one incident of prior discipline: he received one letter of admonition in November 1978 involving a conflict of interest, *id.* at 9.22(a); Bauer had a dishonest and selfish motive, *id.* at 9.22(b); Bauer had a pattern of misconduct: he signed his wife's name to checks using her social security benefits for his own purposes over an eight month period, *id.* at 9.22(c); Bauer engaged in multiple offenses, including the misappropriation of funds and commingling, *id.* at 9.22(d); Bauer has refused to acknowledge the wrongful nature of his conduct, *id.* at 9.22(g); and Bauer had substantial experience in the practice of law, *id.* at 9.22(i). Bauer failed to appear at the

hearing and therefore no factors in mitigation were presented or considered by the PDJ and Hearing Board.

Hearing Board Member, Lisa M. Wayne, concurs in part and dissents in part:

I agree with the majority in its ultimate determination that the conduct at issue is subject to sanction. However, because I believe the sanction of disbarment unwarranted under the facts and circumstances of this case, I dissent.

The single most important factor in determining the appropriate level of discipline in this case is whether Bauer's misappropriation of funds was knowing, in which case disbarment is the presumed sanction, or whether it was reckless, or merely negligent, suggesting that a period of suspension is adequate. *People v. Zimmerman*, 922 P.2d 325, 329 (Colo. 1996); *People v. Varallo*, 913 P.2d 1, 12 (Colo. 1996); *People v. Dickinson*, 903 P.2d 1132, 1138 (Colo.1995).

Because disbarment is the presumed sanction for a knowing misappropriation, it must be established by clear and convincing evidence that the misappropriation of funds was knowing, not merely negligent. *Varallo*, 913 P.2d at 11 (*quoting Dickinson*, 903 P.2d at 1138).

The majority's conclusion of knowing is apparently predicated upon Bauer's examination of Mrs. Bauer's checking account. I cannot find that the evidence supports a clear and convincing conclusion that Bauer knowingly misappropriated the funds of another.

Bauer testified that he made no review of Mrs. Bauer's account. He testified that he closed that account with a small estate affidavit only after being notified by the Social Security Administration that deposits were being made to that account. Within the same hour of that notification, Bauer repaid the sums to the Social Security Administration. With the exception of a receipt and a thank you, Social Security has made no further contact with Bauer. Further, while Bauer did not directly contact the Social Security Administration concerning his wife's death, he did record her death certificate.

Given the evidence as a whole, the death of Bauer's wife and his immediate repayment of the Social Security funds, there is "some lingering doubt" about whether Bauer engaged in a knowing conversion of the funds at issue. *People v. McGrath*, 780 P.2d 492, 493. Thus, I cannot find that it was established by clear and convincing evidence that the conversion of funds was knowing or intentional. *People v. Galindo*, 884 P.2d 1109, 1112 (Colo. 1994).

In fact, a reckless state of mind is insufficient to warrant disbarment. *People v. Zimmerman*, 922 P.2d 325, 329 (Colo. 1996).

I am troubled by a comparison of the conduct and intent in this case with *Zimmerman*, 922 P.2d 325 (Colo. 1996). In *Zimmerman*, the respondent attorney took no steps to rectify or clarify his conduct, despite the initiation of an investigation and a warning of the deficiencies. *Zimmerman*, 922 P.2d at 329. This conduct was found to be reckless. Here, in comparison, when Bauer was given notice by the Social Security Administration, Bauer immediately modified his conduct and repaid the monies to the Social Security Administration.

Thus, I would find that Bauer's intent was reckless, resulting in a technical conversion. A "technical conversion," is a conversion or misappropriation where the misappropriation was negligent, or it cannot be proven by clear and convincing evidence that the respondent knowingly converted the funds. *Varallo*, 913 P.2d at 11. See *People v. Dickinson*, 903 P.2d 1132, 1138 (Colo.1995); *People v. Galindo*, 884 P.2d 1109, 1112 (Colo.1994); *People v. Wechsler*, 854 P.2d 217, 220-21 (Colo.1993). A technical conversion usually warrants suspension, rather than disbarment. *Varallo*, 913 P.2d at 11; *Wechsler*, 854 P.2d at 222-23. See ABA Standards 4.12 ("[s]uspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.").

Because, in my opinion, there is some lingering doubt as to Bauer's intent, I believe the sanction of disbarment to be improper. Instead, I would suspend Bauer from the practice of law for 3 years.

III. ORDER

It is therefore ORDERED:

1. That RICHARD BURTON BAUER, attorney registration number 01024, is DISBARRED from the practice of law effective thirty-one days from the date of this Order, and his name shall be stricken from and his name shall be stricken from the roll of attorneys licensed to practice law in this state.
2. Bauer is ORDERED to pay the costs of these proceedings within sixty (60) days of the date of this Order.

3. The People shall submit a Statement of Costs within fifteen (15) days of the date of this Order. Respondent shall have ten (10) days thereafter to submit a response thereto.

DATED THIS 22nd DAY OF MAY, 2000.

(SIGNED)

ROGER L. KEITHLEY
PRESIDING DISCIPLINARY JUDGE

(SIGNED)

THOMAS C. HENLEY
HEARING BOARD MEMBER

(SIGNED)

LISA M. WAYNE
HEARING BOARD MEMBER