***People v. Kelly Ann Breuer*. 16PDJ084. June 28, 2017.**

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Kelly Ann Breuer (attorney registration number 28558), effective August 2, 2017.

Breuer was hired to represent a client in a divorce case. She directed the client to transfer over $18,000.00 into her COLTAF trust account so that she could preserve the funds and later use them to satisfy the client's anticipated divorce settlement. But Breuer consumed the funds herself, preventing her client from fulfilling the terms of the separation agreement and the resulting court order. Moreover, Breuer misrepresented to the divorce court that she was safeguarding those funds when in fact she was consuming them. Breuer then abandoned her client, disregarded requests from disciplinary authorities, and failed to participate in this disciplinary proceeding.

In this matter, Breuer violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a) (a lawyer shall reasonably communicate with the 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 1.15A(a) (a lawyer shall hold client property separate from the lawyer's own property); Colo. RPC 1.15A(b) (upon receiving funds or other property of a client or third person, a lawyer shall promptly deliver to the client or third person any funds or property that person is entitled to receive); Colo. RPC 1.15C(a) (a lawyer shall not withdraw cash from a trust account); Colo. RPC 1.16(d) (a lawyer shall protect a client's interests upon termination of the representation); Colo. RPC 3.3(a)(1) (a lawyer shall not knowingly make a false statement of material fact or law to a tribunal); Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); Colo. RPC 8.1(b) (a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority); and Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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:** KELLY ANN BREUER	Case Number: **16PDJ084**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)	

Kelly Ann Breuer ("Respondent") was hired to represent a client in a divorce case. She instructed the client to transfer over $18,000.00 into her COLTAF account so that she could preserve the funds and later use them to satisfy the client's anticipated divorce settlement. But she consumed the funds herself, preventing her client from fulfilling the terms of the separation agreement and the resulting court order. Moreover, Respondent misrepresented to the divorce court that she was safeguarding those funds when in fact she was in the process of consuming them. She compounded this misconduct by abandoning her client, disregarding requests from disciplinary authorities, and failing to participate in this disciplinary proceeding. Respondent's conduct in violation of Colo. RPC 1.3, 1.4(a), 1.4(b), 1.15A(a), 1.15A(b), 1.15C(a), 1.16(d), 3.3(a)(1), 3.4(c), 8.1(b), and 8.4(c) warrants disbarment.

I. PROCEDURAL HISTORY

On December 29, 2016, the Colorado Supreme Court immediately suspended Respondent's license to practice law under C.R.C.P. 251.8(b)(2). Bryon M. Large, Office of Attorney Regulation Counsel ("the People"), then filed a complaint with Presiding Disciplinary Judge William R. Lucero ("the Court") on January 17, 2017. The People sent Respondent copies of the complaint the same day at her registered business address and several additional addresses. She failed to answer, and the Court granted the People's motion for default on March 17, 2017. Upon the entry of default, the Court deemed all facts set forth in the complaint admitted and all rule violations established by clear and convincing evidence.[1]

On June 21, 2017, the Court held a sanctions hearing under C.R.C.P. 251.15(b). Large represented the People; Respondent did not appear. The People's exhibits 1-3 were

[1] *See* C.R.C.P. 251.15(b); *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

admitted into evidence, and the Court heard testimony by telephone from Aleksandr Shiling.[2]

II. ESTABLISHED FACTS AND RULE VIOLATIONS

The Court adopts and incorporates by reference the averments in the admitted complaint, presented here in condensed form. Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on October 21, 1997, under attorney registration number 28558. She is thus subject to the Court's jurisdiction in this disciplinary proceeding.[3]

In January 2016, Aleksandr Shiling hired Respondent to assist him in his divorce case. That April, Shiling received a settlement of over $36,000.00 in an unrelated personal injury matter. Even though no settlement had been reached in the divorce case, Respondent told Shiling that half of the personal injury settlement would need to be paid to his wife in the divorce settlement, and Respondent directed him to place $18,184.44 into her COLTAF account to be held for that purpose.

Shiling wired the money to Respondent's COLTAF account on May 2, 2016. Also on May 2, Shiling wired an additional $2,000.00 to Respondent's COLTAF account to supplement his retainer. After the wiring was complete on May 2, the balance in Respondent's COLTAF account was $20,184.49—all but five cents of which belonged to Shiling.

Shiling's divorce case settled on May 23, 2016. The parties' separation agreement became an order of the court on June 24, 2016, *nunc pro tunc* to May 23, 2016. The separation agreement provided that Shiling's personal injury settlement was to be used to pay off marital debt within thirty days of entry of the divorce decree. Further, the agreement stated that $18,184.44 in personal injury settlement funds were being held in Respondent's trust account and that Shiling was to wire these funds to his wife within thirty days.

Respondent never wired the money. In fact, on May 23, 2016, when Respondent signed off on the separation agreement and represented to the court that she was holding the $18,184.44, she had already consumed most of the money. In the weeks following Shiling's deposits, Respondent withdrew more than $9,000.00 in cash from her COLTAF account and made several transfers to her operating and personal accounts, consuming all but seventy-seven cents of Shiling's trust funds by June 2, 2016.

Respondent has not communicated with Shiling since June 2016, yet she has not withdrawn from his case. Shiling tried to contact Respondent numerous times, but she never responded. Opposing counsel's efforts to reach Respondent were similarly unsuccessful.

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[2] On June 28, 2017, at the Court's direction, the People filed a "Notice of Supplementation of Record," submitting Exhibit 5 for the Court's consideration. The Court **ADMITS** Exhibit 5 into the record.

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

On November 2, 2016, Shiling's now-ex-wife moved for a contempt citation in Arapahoe County District Court, alleging that Shiling violated the separation agreement and court order by failing to transfer the $18,184.44 to her. The court issued a citation to show cause on December 12, 2016. As attorney of record, Respondent received filings from the court and the opposing party, yet she never informed Shiling of those filings, nor was he otherwise served with the filings.

After Shiling filed a request for investigation with the People in July 2016, the People sent Respondent multiple letters and emails, but she never responded. When the People served a copy of an investigative subpoena *duces tecum* on Respondent, she left a voice message for the People on October 25, 2016, indicating that she had received the People's process letters and wanted to discuss the status of the investigation. The People returned the call, but Respondent never again communicated with them.

In this case, Respondent transgressed eleven of the Rules of Professional Conduct: Colo. RPC 1.3, which requires a lawyer to act with reasonable diligence and promptness when representing a client; Colo. RPC 1.4(a), which requires a lawyer to reasonably communicate with the client; Colo. RPC 1.4(b), which provides that a lawyer shall explain a matter so as to permit the client to make informed decisions regarding the representation; Colo. RPC 1.15A(a), which mandates that a lawyer hold client property separate from the lawyer's own property; Colo. RPC 1.15A(b), which provides that upon receiving funds or other property of a client or third person, a lawyer shall promptly deliver to the client or third person any funds or property that person is entitled to receive; Colo. RPC 1.15C(a), which bars a lawyer from withdrawing cash from a trust account; Colo. RPC 1.16(d), which states that a lawyer shall protect a client's interests upon termination of the representation; Colo. RPC 3.3(a)(1), which forbids a lawyer from knowingly making a false statement of material fact or law to a tribunal; Colo. RPC 3.4(c), which states that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal; Colo. RPC 8.1(b), which provides that a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority; and Colo. RPC 8.4(c), which interdicts conduct involving dishonesty, fraud, deceit, or misrepresentation.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[4] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[5] When imposing a sanction after a finding of lawyer misconduct, the Court must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

[4] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).
[5] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

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

Duty: By abandoning Shiling's case and by failing to safeguard and then converting his funds, Respondent violated her duties to her client. Respondent's misrepresentation to the court and refusal to honor the court's order, meanwhile, represent derelictions of her obligations to the legal system. The ABA *Standards* denominate Respondent's failure to properly withdraw from the representation and her refusal to cooperate in this matter as violations of her duty to the profession.

Mental State: The Court's order entering default establishes that Respondent knowingly violated Colo. RPC 3.3(a)(1), 3.4(c), and 8.1(b). The evidence strongly suggests that Respondent knowingly committed the other misconduct at issue in this case.

Injury: At the sanctions hearing, Shiling testified about how Respondent's conduct harmed him. He said he was unable to pay his ex-wife the amount ordered in the separation agreement without access to the $18,184.44 in Respondent's COLTAF account. By the time his ex-wife filed for contempt, Shiling had moved to Florida. He had to purchase an expensive last-minute ticket to fly to Colorado for the contempt hearing, where the magistrate warned him that he might have to serve time in jail. He also had to take days off work, leading to foregone income. Because that foregone income would have helped pay for his children's summertime visit to Florida, he had to borrow money from his girlfriend to pay for their trip. According to Shiling, his ex-wife believed he was collaborating with Respondent to deprive her of the $18,184.44 payment, and his ex-wife told their children that he was trying to keep money that should have gone for their uniforms, extracurricular activities, and the like. Thus, Respondent's conduct has damaged Shiling's relationship with his children and their mother. In addition, when he failed to make the court-ordered payment to his ex-wife, he was reported to collection agencies, so when his car later broke down he was unable to get a new one. Although the Attorneys' Fund for Client Protection ultimately reimbursed him in the amount of $22,684.44 (all of the funds he had entrusted or paid to Respondent during the representation),[6] Shiling said that Respondent's conduct has shaken his trust in the legal profession.

In addition to the harm suffered by Shiling, the Court finds that Respondent injured Shiling's ex-wife, the court system, and the legal profession through her misconduct.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

Disbarment is the presumptive sanction in this case under at least one of the ABA *Standards*: ABA *Standard* 4.11 calls for disbarment where a lawyer knowingly converts client property, thereby causing a client injury or potential injury. Given the clear applicability of this *Standard*, it is unnecessary for the Court to review the many other applicable *Standards*.

[6] Ex. 5.

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 presumptive sanction to be imposed, while mitigating circumstances may warrant a reduction in the severity of the sanction.[7] Four aggravating factors are present here. Respondent acted with a dishonest motive, she has refused to acknowledge the wrongful nature of her misconduct, she has substantial experience in the practice of law, and she has demonstrated indifference to making restitution.[8] The Court is aware of but one mitigator: Respondent does not have a disciplinary record.[9]

Analysis Under ABA *Standards* and Colorado Case Law

The Court is aware of the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[10] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[11] Though prior cases are helpful by way of analogy, the Court is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

The People request disbarment in this matter. This request is amply supported. The Colorado Supreme Court has determined that knowing conversion of funds from clients or other parties warrants disbarment, except where substantial mitigating factors are present.[12] This settled case law, coupled with the presumptive sanction, the several applicable aggravating factors, and Respondent's failure to present mitigating evidence, clearly supports imposition of disbarment here.

IV. CONCLUSION

In the client representation underlying this disciplinary case, Respondent entirely abdicated her duties to her client, third parties, the legal system, and the legal profession. She not only knowingly converted funds but also deceived the court, abandoned her client,

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[7] *See* ABA *Standards* 9.21 & 9.31.

[8] ABA *Standard* 9.22(b), (g), and (i)-(j). Although the People also request application of ABA *Standard* 9.22(e)—bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency—the Court finds that Respondent's failure to participate in this proceeding is addressed by the Colo. RPC 8.1(b) charge, and the Court lacks evidence that she otherwise intentionally acted in bad faith.

[9] ABA *Standard* 9.32(a).

[10] *See In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *In re Fischer*, 89 P.3d 817, 822 (Colo. 2004) (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).

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

[12] *See, e.g., People v. Lavenhar*, 934 P.2d 1355, 1358-59 (Colo. 1997) (imposing disbarment for multiple instances of misconduct, the most serious of which was knowing conversion of third-party funds, and stating that "[w]e have repeatedly held that a lawyer's knowing misappropriation of funds, whether belonging to a client or third party, warrants disbarment except in the presence of extraordinary factors of mitigation"); *People v. Varallo*, 913 P.2d 1, 10-12 (Colo. 1996) (indicating that knowing conversion calls for disbarment, absent significant mitigation).

and disregarded requests for information from disciplinary authorities. The Court thus disbars Respondent.

V. ORDER

The Court therefore **ORDERS:**

1. **KELLY ANN BREUER**, attorney registration number **28558**, will be **DISBARRED FROM THE PRACTICE OF LAW**. The **DISBARMENT SHALL** take effect only upon issuance of an "Order and Notice of Disbarment."[13]

2. To the extent applicable, 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. Respondent also **SHALL** file with the Court, within fourteen days of issuance of the "Order and Notice of Disbarment," an affidavit complying with C.R.C.P. 251.28(d), requiring an attorney to file an affidavit with the Court setting forth pending matters and attesting, inter alia, to notification of clients and other jurisdictions where the attorney is licensed.

4. The parties **MUST** file any posthearing motions **on or before July 12, 2017**. Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **on or before July 19, 2017**. Any response thereto **MUST** be filed within seven days.

6. Respondent **SHALL** pay restitution in the amount of $22,684.44 to the Colorado Attorneys' Fund for Client Protection **on or before July 26, 2017**.

7. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a statement of costs **on or before July 12, 2017**. Any response thereto **MUST** be filed within seven days.

DATED THIS 28th DAY OF JUNE, 2017.

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

[13] In general, an order and notice of disbarment will issue thirty-five days after a decision is entered under 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.

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