People v. Carder. 10PDJ055. March 11, 2011. Attorney Regulation. Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Dennis L. Carder (Attorney Registration Number 36474), effective April 11, 2011. In ten client matters, Respondent failed to communicate with his clients and failed to perform work on their behalf, effectively abandoning them. In many of these cases, Respondent's clients sought a refund of their retainers and return of their files, but Respondent never provided accountings or refunds, nor did he ever return their files. His misconduct constituted grounds for the imposition of discipline pursuant to C.R.C.P. 251.5 and violated Colo. RPC 1.3, 1.4(a), 1.5(a), 1.5(f), 1.5(g), 1.15(a), 1.15(b), 1.15(c), 1.15(i)(3), 1.15(i)(6), 1.15(j), 1.16(d), and 8.4(c).

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** DENNIS L. CARDER	Case Number: **10PDJ055 (consolidated with 10PDJ069)**

DECISION AND ORDER IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.19(c)

On January 10, 2011, the Presiding Disciplinary Judge ("the Court") held a Sanctions Hearing pursuant to C.R.C.P. 251.15(c). Elizabeth E. Krupa appeared on behalf of the Office of Attorney Regulation Counsel ("the People"). Dennis L. Carder ("Respondent") did not appear, nor did counsel appear on his behalf. The Court now issues the following "Decision and Order Imposing Sanctions Pursuant to C.R.C.P. 251.19(c)."

I. ISSUE AND SUMMARY

In ten client matters, Respondent failed to communicate with his clients and failed to perform work on their behalf, effectively abandoning them. In many of these cases, Respondent's clients sought a refund of their retainers and return of their files, but Respondent never provided accountings or refunds, nor did he ever return their files. Respondent's misconduct constitutes abandonment and conversion, warranting disbarment.

II. PROCEDURAL HISTORY

On February 16, 2010, the People petitioned the Colorado Supreme Court to immediately suspend Respondent pursuant to C.R.C.P. 251.8.6 due to Respondent's failure to cooperate on matters involving serious charges. The Colorado Supreme Court granted the People's petition following briefing from the parties and immediately suspended Respondent on March 28, 2010.

On May 21, 2010, the People filed a citation and complaint in case number 10PDJ055 and sent copies via certified mail to Respondent at his registered business address of 3617 South Acoma Street, Englewood, CO 80110. This

certified mailing was returned to the People marked "Return to Sender – Unclaimed – Unable to Forward – Return to Sender." The People filed a "Proof (Attempted Service)" on August 26, 2010.[1] The People thereafter sent Respondent a reminder letter dated September 21, 2010.[2] After Respondent failed to answer the complaint, the Court entered its "Order Entering Default Pursuant to C.R.C.P. 251.15(b)" on November 29, 2010.

During this time, the People also filed separate claims against Respondent in case number 10PDJ069. On June 23, 2010, the People filed a citation and complaint in that matter and sent copies via certified mail to Respondent at his registered business address, which was returned to the People marked "Not deliverable as Addressed." On July 6, 2010, the People sent copies of the citation and an amended complaint to Respondent, and this mailing was likewise returned to the People marked "Not deliverable as Addressed." The People filed a "Proof of Attempted Service" on August 26, 2010.[3] Respondent failed to answer the People's complaint, and the Court entered an "Order Entering Default Pursuant to C.R.C.P. 251.15(b)" in case number 10PDJ069 on September 30, 2010.

On January 3, 2011, the Court granted a motion to consolidate case numbers 10PDJ055 and 10PDJ069. During the sanctions hearing, the Court considered testimony and admitted the People's exhibits 1-5.

III. FINDINGS OF FACT AND RULE VIOLATIONS

The Hearing Board finds the following facts and rule violations have been established by clear and convincing evidence.

Jurisdiction

Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on August 29, 2005. He is registered upon the official records, attorney registration number 36474, and is thus subject to the jurisdiction of the Hearing Board in these disciplinary proceedings.[4] Respondent's registered business address is 3617 South Acoma Street, Englewood, Colorado 80110.

The Washington Matter

On January 19, 2009, Tammy Washington ("Washington") hired Respondent on a flat-fee basis to handle her Chapter 7 bankruptcy proceeding, agreeing to pay him $1,000.00 total, plus a $299.00 filing fee. Respondent told

[1] *See* Ex. A to "Complainant's Motion for Default" filed on October 6, 2010.
[2] *See Id.* at Ex. B.
[3] *See* Ex. A to "Complainant's Motion for Default" filed on August 31, 2010.
[4] *See* C.R.C.P. 251.1(b).

Washington he would prepare and file the appropriate pleadings to begin her bankruptcy proceedings once she paid the first two payment installments, totaling $599.00. The flat-fee agreement also provided that "[o]nce Attorney begins work on this contract, any termination of services by Client will result in loss of the agreed-upon fee." Respondent asked Washington to provide him with her pay stubs for the prior six months, but he did not request any other records or information necessary to prepare bankruptcy schedules.

Washington paid an initial check of $299.00 on January 19, 2009, which Respondent deposited in his business account the next day. He also cashed checks he received from her on February 20, 2009 ($300.00), April 7, 2009 ($100.00), and April 20, 2009 ($100.00), even though he had not performed any work up to that time. Respondent and Washington were in intermittent contact the spring and summer of 2009, but between October 2009 and January 2010, Respondent failed to return Washington's calls and was otherwise unavailable to speak with her, despite the many efforts she made to contact him. Respondent never filed a Chapter 7 bankruptcy for Washington, nor did he return any of the funds she had provided him.

Respondent violated many rules governing professional conduct in his handling of the Washington matter: he violated Colo. RPC 1.3 (failed to act diligently and promptly); Colo. RPC 1.4(a)(4) (failed to promptly comply with reasonable requests for information); Colo. RPC 1.5(f) (converted unearned funds by failing to deposit them in a trust account); Colo. RPC 1.5(g) (included a non-refundable fee provision in fee agreement); Colo. RPC 1.16(d) (failed to refund unearned amount of retainer and filing fees); and Colo. RPC 8.4(c) (knowingly exercised unauthorized dominion over client funds and thus engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The Green Matter

On February 12, 2008, Alfred Green ("Green") retained Respondent to represent him in two matters. In the first, Green agreed to pay Respondent $75.00 an hour plus 15% of any settlement, with a $250.00 retainer, to collect against a judgment Green had earlier obtained against EAP Auto. The second covered Respondent's representation of Green in a warranty dispute with Broadway Dodge, for which Green agreed to pay Respondent $150.00 per hour, with an initial $500.00 retainer. Green wrote Respondent a check for $750.00 to cover both retainers, and Respondent cashed the check that same day.

No evidence exists that, during the remainder of 2008, Respondent performed any work for Green on either the EAP Auto matter or the Broadway Dodge matter. Nevertheless, on seven occasions between February and June 2008, Respondent's trust account dipped below $750.00, and by July 8, 2008, only $3.30 remained in that account.

On January 8, 2009, another attorney sent a letter to Respondent on Green's behalf, requesting that Respondent provide an itemized account statement of his time spent working on Green's matters. On January 31, 2009, Respondent sent a letter to Green in response, stating he had been out of town and had experienced medical difficulties, and he claimed that he had sent two letters to Broadway Dodge and had conducted legal research in the EAP Auto matter. Respondent volunteered to either refund the unused portion of both retainers and return the files or aggressively pursue both cases with no further charge to Green. Green opted to allow Respondent to continue work on both matters.

Several months later, Respondent contacted Green a few times to discuss the Broadway Dodge case, although Respondent did not provide Green with any documents related to the dispute. On September 23, 2009, seventeen months after he had been retained, Respondent filed a complaint on Green's behalf in that case, but a series of delays ultimately led the court to dismiss the action without prejudice for failure to prosecute on December 24, 2009. By December 18, 2009, Green had been unable to contact Respondent for over nine months.

Respondent's conduct violated Colo. RPC 1.3 (failed to act with diligence and promptness); Colo. RPC 1.4(a) (failed to promptly and reasonably communicate with client); Colo. RPC 1.5(a) (charged an unreasonable fee); Colo. RPC 1.15(b) (failed to provide a full accounting upon request); Colo. RPC 1.5(f) (converted unearned funds by failing to deposit them in a trust account); and Colo. RPC 8.4(c) (converted retainer without having done any work on client's behalf and thereby engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The Garcia Matter

Joshua Garcia ("Garcia") retained Respondent on July 1, 2009, to assist in the modification of child support and visitation rights orders concerning his minor child. They entered into a flat-fee agreement for $750.00 plus costs, whereby Garcia would pay $400.00 up front, with the remainder due in monthly installments of $100.00. The retainer agreement provided that once Respondent began work, Garcia could not terminate the representation without losing all money he had paid Respondent. Garcia immediately gave Respondent $400.00 in cash. There is no indication that this payment was ever deposited into Respondent's trust account; rather, an entry in Respondent's business checking account appears for that same sum on July 2, 2009.

Respondent instructed Garcia to file immediately a motion to modify the child support and visitation orders on his own, which Garcia did. After several attempts to contact Respondent, Garcia was able to schedule a time with him on July 21 or 22, 2009, to discuss his support worksheet, financial affidavit, and an amended motion for modification, which Garcia had emailed to Respondent.

Despite this scheduled conference, Garcia was unable to reach Respondent on either date.

On July 28, 2009, Garcia emailed Respondent a copy of an Order Regarding Motion to Modify Child Support, which was entered on July 13, 2009, by the divorce court. The order directed the parties to file sworn financial statements, supporting pay stubs, proposed support orders, and child support worksheets by August 12, 2009, and it ordered the parties to contact a mediator by July 23, 2009, to schedule mediation regarding the motion. Respondent emailed Garcia promising to call him that afternoon, but Garcia never received a call, and Garcia could not reach Respondent by telephone.

On August 3, 2009, Garcia's current wife emailed Respondent to request that he contact her and that he enter his appearance. Respondent responded that same evening, promising to get everything in order. Ms. Garcia then sent Respondent a check for $100.00, which he deposited in his trust account. On August 6 or 7, 2009, Respondent spoke briefly with Garcia, vowing to submit his entry of appearance. But on August 13, 2009, Ms. Garcia emailed Respondent to discuss the fact that he still had not filed an entry of appearance or any other pleading. Respondent replied on August 15, 2009, and promised to enter his appearance the week of August 17th.

After another ten-day period in which Respondent failed to communicate, Ms. Garcia emailed again to express concern that no paperwork had been submitted to the court. On August 31, 2009, Respondent sent a reply email indicating that his entry of appearance and Garcia's financial affidavit had been filed.[5] Ms. Garcia sent Respondent another $100.00 check, which he deposited into his business account.

On September 8, 2009, Ms. Garcia emailed Respondent to give him a new contact number. She also asked him to email her a copy of his entry of appearance and to contact Garcia's ex-wife to schedule the mediation. Later that day, Garcia briefly spoke on the telephone with Respondent, who assured him that he would file the paperwork and handle communications with his ex-wife.

Garcia emailed Respondent again on September 15, 2009, to change the scheduled date of mediation, to request copies of documents Respondent claimed to have filed with the court, and to express concern over his repeated unsuccessful efforts to contact him. The next day, Ms. Garcia again emailed Respondent to ask him to handle scheduling the mediation, find a centrally-located mediator, and provide copies of court-filed documents. Respondent replied the same day, seeking alternate dates for mediation.

[5] Respondent's attempt to file the entry of appearance electronically on August 26, 2009, was, in fact, rejected.

On September 21, 2009, Garcia emailed Respondent because he had not heard from him. Garcia requested Respondent send him copies of documents filed with the court, confirm the mediation had been rescheduled, and refund the $600.00 he had been paid to handle the case. Respondent filed his entry of appearance the same day. The next day, Garcia emailed Respondent again, repeating his demands. More than a month later, on October 25, 2009, Respondent filed with the court Garcia's financial affidavit, which Garcia had signed in early August, along with a motion to withdraw. That motion was granted in December 2009, but as of this date, Respondent has not provided Garcia an accounting of his time or a refund of the unearned portion of his retainer.

Respondent's mishandling of Garcia's legal matter violated Colo. RPC 1.3 (failed to act with reasonable diligence and promptness); Colo. RPC 1.4(a) (failed to promptly and reasonably communicate with client); Colo. RPC 1.5(f) (converted unearned funds by failing to deposit them in a trust account); Colo. RPC 1.15(j) (failed to maintain appropriate receipt and disbursement records from all trust accounts concerning law practice); Colo. RPC 1.5(g) (included a non-refundable fee provision in fee agreement); Colo. RPC 1.16(d) (failed to refund unearned amount of retainer); and Colo. RPC 8.4(c) (converted unearned funds, thereby engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The Slay Matter

In early April 2008, Vern Slay ("Slay") retained Respondent to modify a parenting plan. Per the fee agreement, Slay was to pay an initial retainer of $750.00 to be billed against hourly work at a rate of $150.00 per hour. Slay sent Respondent a $750.00 check, issued by Jennifer Groll and dated April 11, 2008. On April 20, 2008, Slay emailed Respondent because he was experiencing difficulty reaching him by telephone; Slay conveyed that he was having second thoughts about the engagement. Respondent replied the next day.

Meanwhile, Respondent deposited the $750.00 check in his trust account in late April 2008. Respondent's trust account balance dipped below that figure on May 23, 2008, and by early July 2008 the trust account was almost empty, even though Respondent had done no meaningful work on Slay's matter prior to mid-July 2008.

On July 11, 2008, Slay emailed Respondent regarding the status of his case and noting that Respondent had not returned Slay's June 30, 2008, call. Respondent replied on July 16, 2008, with case updates, and Slay replied by email on July 22, 2008, attaching a proposed modification of the parenting plan. Slay did not hear back from Respondent, so on August 25 and 28, 2008, Slay emailed him again to inquire as to how much of the retainer he had used.

Throughout September 2008, Slay and Respondent exchanged several emails concerning Slay's matter, but on November 3, 2008, Slay notified Respondent that his opposing party had not received a financial affidavit from Respondent. Again on November 7, 2008, Slay emailed to express dissatisfaction with Respondent's lack of communication, seek an itemized accounting, and request Respondent send the opposing party a financial affidavit form.

On March 16, 2009, Respondent filed an entry of appearance, along with an unopposed motion to transfer the case to another division. On October 13, 2009, with prompting from the People, Respondent sent a letter to Chief Judge William Blair Sylvester, requesting that a judge be assigned to rule on the motion to transfer or that an alternative means be devised to move the case along. Judge Sylvester granted the motion eight days later. Slay terminated Respondent's services on December 1, 2009, but Respondent failed to provide an accounting of his time or refunded any of the unearned portion of the retainer to Slay.

In representing Slay, Respondent violated several Rules of Professional Conduct. Specifically, Respondent violated Colo. RPC 1.3 (failed to act with diligence and promptness); Colo. RPC 1.4(a) (failed to promptly and reasonably communicate with client); Colo. RPC 1.15(a) (consumed client's property, which he failed to keep separate from his own); Colo. RPC 1.15(b) (failed to provide a full accounting upon request); Colo. RPC 1.15(j) (failed to maintain appropriate receipt and disbursement records from all trust accounts concerning law practice); Colo. RPC 1.16(d) (failed to refund unearned amount of retainer); and Colo. RPC 8.4(c) (converted unearned portion of retainer, thereby engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The Willis Matter

Doug Willis ("Willis"), a resident of California, had a brother, Leighton T. Willis ("Leighton"), who was a resident of Jefferson County, Colorado. Leighton had been missing for several years, and Willis contacted Respondent about having Leighton declared deceased and probating Leighton's will. On May 20, 2008, Willis and Respondent executed a flat-fee agreement, which stated, "Once Attorney begins work on this contract, any termination of services by Client will result in loss of the agreed upon fee." It also provided that Respondent would "research and advise regarding settlement of probate and estate." Willis paid $300.00 for these services, and Respondent cashed the check, rather than depositing it in his trust account.

On May 29, 2008, Willis sent Respondent a letter confirming Respondent would represent him in proceedings related to Leighton's estate for an additional $1,500.00, including filing fees, and enclosing a check for that amount. Respondent did not ask Willis to execute another retainer agreement for this

additional work. On June 2, 2008, the $1,500.00 check was cashed, not deposited into a trust account.

On July 9, 2008, Respondent filed a petition for determination of death, and on July 28, 2008, the Jefferson County district court determined that Leighton died on March 9, 2004. On September 29, 2008, Willis spoke with Respondent, asking him to conclude the probate case within three months. On November 10, 2008, Willis wrote to Respondent requesting that he refer the case to somebody else if he was unable to complete the matter within that timeframe.

On December 27, 2008, Willis emailed Respondent confirming receipt of Leighton's death certificate, and he mentioned that he had not yet received a letter granting him status as executor of Leighton's estate. On January 16, 2009, Respondent filed in the probate case an application for informal probate of will and appointment of personal representative, attaching a copy of Leighton's last will and testament. Respondent made no other filings in this case. In a January 27, 2009, email to Willis, Respondent promised to call the court to determine whether it had approved Willis as personal representative.

On March 2, 2009, when he had not yet heard from Respondent, Willis sent an email. He sent another on March 9, 2009, stating that he had been calling since January with no response. Willis requested Respondent provide a referral for another attorney that could finish his case. A month later, Richard N. Grey, a California attorney representing Willis, wrote Respondent to request contact by April 17, 2009. Grey threatened Respondent with formal steps to address his inaction, and he mentioned that Willis had attempted to contact Respondent on at least fourteen separate occasions by telephone and had sent repeated emails with no response.

On April 23, 2009, Willis sent a letter to Respondent requesting the name of the judge on the case and an estimate of when the matter would conclude. He also filed a request for investigation with the People. Several months later, on June 21, 2009, Willis sent Respondent a letter detailing his complaints, requesting the name of the judge handling the matter, and seeking an accounting of the retainer fees used and the return of his file, which should have put Respondent on notice that the representation was being terminated.

On September 2, 2009, Respondent filed another motion on Willis's behalf, but the court determined the motion was moot because Willis had retained Andy L. Gitkind, Esq., to represent his interests. Gitkind filed an acceptance of appointment with the court on October 6, 2009, which was approved three days later. Meanwhile, Respondent produced a copy of Willis's file to the People, which was forwarded to Gitkind. However, Respondent has yet to provide to Willis an accounting of his time or a refund of unearned monies.

Respondent's misconduct caused Willis harm and violated Colo. RPC 1.3 (failed to act with diligence and promptness); Colo. RPC 1.4(a) (failed to promptly

and reasonably communicate with client); Colo. RPC 1.5(a) (charged an unreasonable fee for the work he performed); Colo. RPC 1.5(f) (converted unearned funds by failing to deposit retainer in a trust account); Colo. RPC 1.5(g) (included a non-refundable fee provision in fee agreement); Colo. RPC 1.15(b) (failed to provide a full accounting of client's property upon request); Colo. RPC 1.16(d) (failed to refund unearned amount of retainer); and Colo. RPC 8.4(c) (converted unearned funds, thereby engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The Davis Matter

Ketlye Davis ("Davis") engaged Respondent to assist in transferring to herself title to Colorado real property owned by her deceased mother. Davis's mother's estate was lodged in New Jersey, where she resided at the time of her death. On September 2, 2008, Davis paid Respondent a retainer of $1,000.00 by check, which was deposited into Respondent's COLTAF account six days later. On September 9, 2008, Respondent transferred $1,000.00 from the COLTAF account to an unknown business checking account.

On January 13, 2009, Respondent filed a statement in the Costilla County District Court that "no administration, or application or petition for administration, is pending in Colorado." Although Davis signed this statement before a notary of December 19, 2008, Respondent filed with the court an unsigned copy of the statement, along with a certified copy of Davis's mother's death certificate and the New Jersey court's judgment granting Davis power to administer the estate.

On August 20, 2009, Davis wrote to Respondent, complaining that Respondent had not performed the service for which he had been retained and requesting a complete refund of her retainer. Respondent did not return any of the retainer, but he continued to act as her counsel, and she continued to rely on his efforts.

On August 24, 2009, the court sent a letter to Respondent, notifying him that the documents he filed were insufficient because the sworn statement he filed was not signed. On August 27, 2009, Respondent filed in the probate court the sworn statement that had been signed by Davis before a notary public in December 2008. On September 2, 2009, the court issued a certificate of ancillary filing and closed the case.

Because the deed for the Colorado property was in the name of "Tata Marseilles," it was necessary to amend the name listed for the deceased in the New Jersey probate case to include this moniker. Davis made the necessary arrangements to do so. To move forward, Respondent then had to obtain authenticated copies of the documents amending the name of the deceased in order to give Davis authority to sign a deed transferring title from her mother to herself. Respondent has not done so.

Respondent's misconduct in the Davis matter violated Colo. RPC 1.3 (failed to act with reasonable diligence in promptness); Colo. RPC 1.5(a) (charged an unreasonable fee for the work performed); and Colo. RPC 1.5(f) (converted unearned funds by transferring retainer out of trust account before performing any work).

The Metropolitan Lawyer Referral Service Matters

The Metropolitan Lawyer Referral Service ("MLRS") is a non-profit referral service sponsored by the Colorado Bar Association and the local bar associations of the Colorado Front Range. MLRS's revenue comes, in part, from a "forwarding fee," or a percentage of the fees earned by member attorneys from cases referred to them by MLRS.

On December 4, 2006, Respondent applied to MLRS for membership. As part of his application, Respondent executed a Panel Membership Agreement in which he agreed to collect from each referred client and forward to MLRS a $75.00 referral fee. Respondent also agreed to pay MLRS a forwarding fee of ten percent for each referral. The Agreement stated:

> I understand and acknowledge that any referral fee or forwarding fee or any other monies I collect on behalf of MLRS by virtue of a referral shall be considered funds belonging in part to a client, and I shall be governed by Rule 1.15 of the Colorado Rules of Professional Conduct. I understand and agree to hold such funds in trust for MLRS and accurately report and timely pay over such funds as required by the MLRS Panel Membership Rules and Regulations as amended. Failure to timely report and tender such funds to MLRS shall be considered a violation of C.R.P.C.

Respondent allowed his MLRS membership to lapse. On April 2, 2009, MLRS wrote to Respondent, requesting that he complete and return an enclosed questionnaire concerning the fees he had received from clients referred to him by MLRS. MLRS also asked Respondent to remit any forwarding fees due to MLRS. Respondent did not return the questionnaire or remit any forwarding fees to MLRS. On May 28, 2009, MLRS again wrote to Respondent, reminding him of his obligation to report his receipt of fees and to remit forwarding fees and questioning whether Respondent was deceitfully concealing information and withholding funds. MLRS sent a similar letter to Respondent on August 17, 2009, but Respondent ignored both letters.

MLRS thereafter asserted a claim to ten percent of all fees over $500.00 collected by Respondent. Respondent has yet to provide MLRS with the information it sought or pay MLRS the forwarding fees it is due. Respondent owes MRLS at least the forwarding fees for the following clients: (a) Nikhil Patel,

$25.00; (b) Vern Slay, $25.00; (c) Mark Conti, $99.00; (d) Ketlye Davis, $50.00; (e) Doug Willis, $100.00; and (f) William Scott, $25.00.

By its order of default, the Court established Respondent violated Colo. RPC 1.15(c) (failed to safely keep property in dispute) and Colo. RPC 8.4(c) (knowingly converted funds).

The Blyler Matter

On April 14, 2009, Respondent agreed to represent Christina Blyler ("Blyler") in her divorce. The same day, Blyler entered into a fixed-fee agreement providing that "Once Attorney begins work on this contract, any termination of services by Client will result in loss of the agreed upon fee." That day, Blyler paid Respondent a total of $820.00: $600.00 for legal services and $220.00 for a filing fee. Respondent cashed Blyler's check.

On May 8, 2009, Blyler emailed Respondent requesting a report concerning the status of her case. The next day Respondent replied to her email and asked whether she was available to go over some paperwork. Blyler replied that she was, and Respondent gave Blyler divorce forms to fill out. However, the two did not meet until August or September 2009, at which point Blyler provided Respondent with the completed paperwork. This was Blyler's last meeting with Respondent.

In December 2009, Blyler again requested a report on the status of her case. Respondent sent her an email stating that she needed to fill out a financial affidavit and sign a few papers, and he would file them with the court. In late December 2009 or early January 2010, Blyler spoke with Respondent about the difficulties involved with finding and serving her husband with the divorce petition, and Respondent informed her that he would put an ad in the newspaper. This was the last time Blyler spoke with Respondent.

At the end of January 2010, Blyler emailed Respondent, but he did not respond. Although Blyler also made numerous telephone calls to Respondent and left several messages, she received no response. Blyler sent another email on March 4, 2010, stating that if Respondent did not want to take the case, she wanted her money back so she could find another attorney. On March 10, 2010, Blyler sent a letter to Respondent via facsimile, regular mail, and certified mail describing her numerous attempts to contact him.

Respondent contacted Blyler by email that evening to apologize for not getting back to her. He promised to call her the next evening, but he never contacted her. Blyler contacted Respondent by email, facsimile, and U.S. mail on March 17, 2010, requesting her case number and the status of service on her husband by publication. On March 18, 2010, Blyler terminated Respondent's representation by email, facsimile, and U.S. mail, and she requested a refund of her money and return of her file. Respondent never replied.

Respondent's mishandling of Blyler's matter violated Colo. RPC 1.3 (failed to act with reasonable diligence and promptness); Colo. RPC 1.4(a)(4) (failed to comply with request for information); Colo. RPC 1.5(g) (charged a non-refundable fee); Colo. RPC 1.16(d) (failed to return Blyler's file and unearned fees); Colo. RPC 8.4(c) (knowingly converted funds by failing to return unearned fees); and Colo. RPC 1.5(f) (failed to hold Blyler's property separate by cashing her flat fee check upon receipt).

The Imel Matter

On September 24, 2008, Sheryl Imel ("Imel") retained Respondent to help her regain possession of her car, which was impounded by the city. The fee agreement provided for a flat fee of $250.00 and stated, "Once Attorney begins work on this contact, any termination of services by Client will result in loss of the agreed upon fee." Imel paid Respondent $250.00 in cash that day, but Respondent failed to deposit the cash into his COLTAF account or his business account. Respondent took no steps to recover Imel's car, and Imel continues to receive letters seeking payment from the city.

On January 23, 2009, Imel entered into a flat-fee agreement with Respondent whereby he would handle her uncontested dissolution of marriage case for $920.00, $220.00 of which was to cover the filing fee. The flat-fee agreement contained the same termination of services provision as their earlier agreement. That day, Imel paid Respondent $401.00 of the total due in cash, and Respondent made a cash deposit in his business account, which included the $401.00 payment. Respondent, however, never filed Imel's divorce case.

Also on January 23, 2009, Imel entered into another flat-fee agreement to retain Respondent in her Chapter 7 bankruptcy. The agreement contained the same termination of services provision as described above. Imel agreed to pay Respondent $1,299.00, $299.00 of which represented the filing fee. That day, Imel paid $599.00 in cash, and Respondent made a cash deposit in his business account, which included Imel's payment for the bankruptcy retainer. It does not appear Respondent ever filed a bankruptcy case for Imel.

On March 31, 2009, Imel's sister issued a $1,299.00 check to Respondent on Imel's behalf. Apparently due to inadvertence, this amount was $100.00 more than the remaining balance Imel owed Respondent for his representation in the divorce and bankruptcy cases. Respondent presented this check to Wells Fargo on April 10, 2009, and apparently received cash. By this date, Imel had paid Respondent a total of $2,549.00.

Between August 19, 2009, and December 11, 2009, Imel made forty-five calls to Respondent. On only a couple of occasions did Respondent answer. On January 31, 2010, Imel sent a letter to Respondent requesting return of her money and her file. Respondent failed to respond.

Respondent's misconduct in the Imel matter violated Colo. RPC 1.3 (failed to act with reasonable diligence and promptness); Colo. RPC 1.4(a)(4) (failed to comply with requests for information); Colo. RPC 1.5(g) (charged a non-refundable fee); 1.16(d) (failed to return Imel's file and unearned fees); Colo. RPC 8.4(c) (knowingly converted funds by keeping unearned fees); and Colo. RPC 1.5(f) (failed to deposit Imel's flat fees into his trust account, thereby technically converting funds).

The Smith Matter

On May 27, 2009, Sharon Smith ("Smith") entered into a fee agreement with Respondent for representation in a claim involving the wrongful death of her ex-husband. Smith agreed to pay Respondent $75.00 an hour plus 15% of the settlement on contingency. Smith paid Respondent a $500.00 cash retainer.

In late June and early July 2009, Respondent and Smith exchanged a few emails about the demand letter to the insurance company and whether she had standing to file a claim for the wrongful death of her ex-husband. Respondent claimed to have spent several hours researching the issue. Respondent sent a letter to the insurance company dated July 2, 2009, contending in the letter that although Smith might not have standing to join a wrongful death lawsuit, under tort law she could recover negligence damages. Respondent did not cite any legal authority for this proposition. Respondent promised to provide to the insurance company a "demand package," but there is no evidence that he did so.

Smith emailed Respondent in late February 2010 to inquire whether he still represented her because she had not heard from him since October 2009. She referenced the difficulty she had experienced in contacting him and the fact that she was about to lose her home. Indeed, throughout Respondent's representation of her, Smith made numerous unsuccessful attempts to contact him, including over thirty calls between May 2009 and March 2010. Ultimately, Smith managed to meet Respondent on March 6, 2010, at Respondent's home office. At that meeting, Respondent informed her that he was closing his law practice.

In Smith's matter, Respondent violated Colo. RPC 1.4(a)(4) (failed to comply with requests for information) and Colo. RPC 1.5(f) (technically converted funds when he failed to deposit client funds into trust account).

The Villhauer Matter

On November 8, 2009, Jean Rangingisan-Villhauer ("Rangingisan") and James Villhauer met with Respondent to retain him in connection with Rangingisan's U.S. Department of Homeland Security removal proceedings. They entered into a fee agreement providing that Respondent would represent Rangingisan in the removal proceeding, file Forms I-130 and I-485 with the

immigration authorities, and attend an interview of Rangingisan. The fee agreement provided that "[o]nce attorney begins work on this contract, any termination of services by Client will result in loss of the agreed upon fee." Rangingisan paid Respondent a total of $855.00 in cash, $500.00 of which was for legal services and $300.00 of which covered the filing fee. Respondent did not deposit the cash into his business account or his trust account.

On December 3, 2008, Respondent entered his appearance in the removal proceeding. On December 16, 2008, Rangingisan and Villhauer wrote to Respondent, terminating his services and complaining that he had failed to return their calls, failed to file Forms I-130 and I-485, and failed to seek any other relief from removal. They expressed concern that the date of Rangingisan's hearing was fast approaching, yet they had not heard from Respondent. They demanded return of their file, the $355.00 filing fee, and the $1,250.00 in fees they claimed to have paid Respondent. Respondent has not returned the unearned portion of the retainer, the filing fee, or the file.

Respondent violated Colo. RPC 1.3 (failed to act with reasonable diligence and promptness); Colo. RPC 1.4(a)(4) (failed to return file and unearned fees); Colo. RPC 1.5(g) (charged nonrefundable fee); Colo. RPC 1.16(d) (failed to return unearned fees); Colo. RPC 8.4(c) (knowingly converted client funds); and Colo. RPC 1.5(f) (failed to deposit flat fees into trust account, thereby technically converting funds).

Other Reported Matters

In case number 09-02146, a service charge to Qwest on Respondent's trust account for $200.42, on or about June 19, 2009, resulted in a negative trust account balance of $85.87, including fees. The Qwest service charge was an automatic payment for telephone service fees from Respondent's trust account. The bank honored the payment to Qwest.

In case number 09-02160, a cash withdrawal on Respondent's trust account for $75.00, on or about June 22, 2009, resulted in a negative balance in that account of $195.87, including fees. The bank honored the cash withdrawal.

In case number 09-02174, a cash withdrawal on or about June 25, 2009, from Respondent's trust account in the amount of $75.00 resulted in a negative balance in that account of $299.93, including fees. The bank honored the cash withdrawal.

In case number 09-02692, a service charge to Xcel Energy on or about August 12, 2009, for $51.77 resulted in a negative balance in that account of $72.94, including fees. The service change was an automatic payment for utility services, and the bank honored the payment.

Wells Fargo records from Respondent's trust account reveal that Respondent made numerous cash withdrawals from this trust account from January 2008 to August 2009. In addition to the automatic payments limned above, Respondent made a payment to Qwest in March 2008 and two automatic payments to Xcel Energy in 2009 from his trust account. Accordingly, Respondent violated Colo. RPC 1.15(a) (converted client funds by making personal payments from trust account); Colo. RPC 1.15(i)(3) (withdrew cash from trust account); Colo. RPC 1.15(i)(6) (failed to reconcile trust account); and Colo. RPC 1.15(j) (failed to maintain required accounting records).

IV. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) ("ABA *Standards*") and Colorado Supreme Court case law govern the selection and imposition of sanctions for lawyer misconduct. ABA *Standard* 3.0 mandates that, in selecting the appropriate sanction, the Hearing Board must consider the duty breached, Respondent's mental state, the injury or potential injury caused, and the aggravating and mitigating evidence.

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

Duty: By engaging in a pattern of neglect and abandonment with respect to ten client matters entrusted to him, Respondent violated a duty to his clients. Specifically, he violated his duties of communication, loyalty, and honesty when he failed to adequately communicate with his clients and converted client funds. Respondent also violated his duties to the profession and the legal system by failing to cooperate or participate in the People's investigation of the matters underpinning these proceedings.

Mental State: The Court's order of default establishes that Respondent knowingly failed to provide competent legal representation to several clients and knowingly failed to communicate with several clients. The Court also finds that Respondent knowingly failed to act with reasonable diligence and knowingly converted client funds.

Injury: Respondent caused his clients both serious injury and potentially serious injury. Respondent's conversion of client funds caused serious financial harm to several clients. Further, by failing to provide competent and diligent representation to his clients, Respondent's neglect and abandonment denied his clients a fair chance to participate in court proceedings and ran the risk of prejudicing their interests.

For instance, Willis testified by telephone that Respondent's abandonment forced him to hire another attorney for an additional $1,500.00, resulted in a needless delay of two years to resolve his matter, and caused him "great anxiety." Mr. Brian Barney, executive director of MLRS, testified at the hearing that Respondent's failure to remit to MLRS the referral fees he owes has

contributed to draining MLRS's financial reserves. Imel testified that Respondent's neglect of her bankruptcy and divorce cases occasioned "headaches and stress trying to get everything taken care of," since her bankruptcy matter has still not been addressed and she resolved her divorce case pro se. Green stated that he never received the file or paperwork concerning his matters, which has complicated his efforts to resolve them.

ABA Standard *3.0 – Aggravating and Mitigating Factors*

Aggravating circumstances are any factors that may justify an increase in the degree of discipline to be imposed. Mitigating circumstances are any factors that may justify a decrease in the degree of discipline to be imposed. The Hearing Board considers evidence of the following aggravating and mitigating circumstances in deciding the appropriate sanction.

Aggravating Factors

Dishonest or Selfish Motive – 9.22(b): Respondent kept thousands of client dollars in unearned fees.

Pattern of Misconduct – 9.22(c): Respondent committed misconduct related to ten client matters and several other reported matters over a period of several years.

Multiple Offenses – 9.22(d): Respondent violated Colo. RPC 1.3, 1.4(a), 1.5(a), 1.5(f), 1.5(g), 1.15(b), 1.15(j), and 8.4(c), among others.

Vulnerability of the Victim – 9.22(h): In the Villhauer matter, the client had overstayed her visa and was seeking to avoid deportation, and the Court considers her to be a vulnerable victim, a factor in aggravation.

Indifference to Making Restitution – 9.22(j): Respondent has not repaid any of the clients from whom he misappropriated funds.

Mitigating Factors

Absence of Prior Disciplinary Record – 9.32(a): Respondent has no prior disciplinary history.

Inexperience in the Practice of Law – 9.32(f): Respondent was admitted to the Colorado bar in August 2005 and thus has been practicing for less than six years.

Sanctions Analysis Under ABA *Standards* and Case Law

ABA *Standard* 4.41 provides that disbarment is generally appropriate when a lawyer "abandons the practice and causes serious or potentially serious

injury to a client;" or "knowingly fails to perform services for a client and causes injury or potentially serious injury;" or "engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client." Similarly, ABA *Standard* 4.11 provides that disbarment is typically warranted when a lawyer knowingly converts client property and thereby causes injury or potential injury. The ABA *Standards* also provide that, in cases involving multiple charges of misconduct, "[t]he ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct."[6]

Here, Respondent engaged in very serious misconduct that included the abandonment of many clients, knowing conversion of client funds, and failure to return client funds and files. In each of the client matters discussed above, Respondent's conduct caused injury or potential injury. As such, Respondent's conduct warrants disbarment: the Colorado Supreme Court has held that, except where significant mitigating factors apply, disbarment is the appropriate sanction for knowing conversion of client funds in violation of Colo. RPC 8.4(c).[7] Disbarment is even more appropriate where, as here, a lawyer's conversion of client funds is coupled with client abandonment.[8] In sum, given the numerous instances of abandonment and conversion in this matter and the lack of significant mitigation, disbarment is clearly the appropriate sanction under the ABA *Standards* and Colorado case law.[9]

V. CONCLUSION

Respondent failed to diligently represent and communicate with ten clients, and he knowingly converted client funds in some of these matters. In light of the extent and serious nature Respondent's misconduct, giving rise to

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[6] *See* ABA *Standards* § II at 7.

[7] *In re Haines*, 177 P.3d 1239, 1250 (Colo. 2008); *In re Cleland*, 2 P.3d 700, 703 (Colo. 2000) (holding that the presumed sanction for knowing misappropriation of client funds is disbarment); *see also People v. Varallo,* 913 P.2d 1, 10-11 (Colo. 1996) (holding that the presumed sanction for knowing conversion of client funds is disbarment, regardless of whether the lawyer intended to permanently deprive the client of those funds).

[8] *See In re Stevenson*, 979 P.2d 1043, 1043-44 (Colo. 1999) (disbarring an attorney who abandoned a client and converted her funds); *People v. Roybal*, 949 P.2d 993, 998 (Colo. 1997) (stating that disbarment is "appropriate when a lawyer effectively abandons his clients and thereby misappropriates unearned attorney fees"); *People v. Tucker*, 904 P.2d 1321, 1325 (Colo. 1995) (disbarring lawyer who abandoned her clients while continuing to collect attorney's fees for work that would not be performed); *People v. Fritsche*, 897 P.2d 805, 806-07 (Colo. 1995) (disbarring lawyer who effectively abandoned clients and disregarded disciplinary proceedings); *People v. Williams*, 845 P.2d 1150, 1152 (Colo. 1993) (disbarring lawyer who neglected legal matter, failed to return retainer, evaded service of process, failed to respond to request for investigation, and abandoned practice).

[9] *See People v. Jamrozek*, 914 P.2d 350, 354 (Colo. 1996) ("In view of the extent of the respondent's misconduct, the absence of prior discipline is not in itself sufficient to justify a sanction less than disbarment.").

the need to protect the public from such future misconduct, the Court concludes Respondent should be disbarred.

The Court therefore **ORDERS**:

1. Dennis L. Carder, attorney registration number 36474, is **DISBARRED** from the practice of law. The disbarment **SHALL** become effective thirty-one days from the date of this order upon the issuance of an "Order and Notice of Disbarment" by the Court and in the absence of a stay pending appeal pursuant to C.R.C.P. 251.27(h).

2. Respondent **SHALL** file any post-hearing motion or application for stay pending appeal with the Court **on or before March 31, 2011**. No extensions of time will be granted.

3. Respondent **SHALL** pay the costs of these proceedings. The People shall submit a "Statement of Costs" within fifteen (15) days of the date of this order. Respondent shall have ten (10) days within which to respond.

4. Respondent **SHALL** pay restitution in the amount of $9,568.00 to the Attorneys' Fund for Client Protection as reimbursement for amounts paid to Respondent's clients as a result of this case.[10]

DATED THIS 11th DAY OF MARCH, 2011.

_____
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Copies to:

Elizabeth Espinosa Krupa — Via Hand Delivery
Office of Attorney Regulation Counsel

Dennis L. Carder — Via First Class Mail
Respondent
3617 South Acoma Street
Englewood, CO 80110

[10] *See* Ex. 1.

Susan Festag
Colorado Supreme Court

Via Hand Delivery