***People v. Weldon Stephen Caldbeck*. 19PDJ080. May 5, 2020.**

The Presiding Disciplinary Judge disbarred Weldon Stephen Caldbeck (Pennsylvania attorney registration number 32027) from the practice of law in Colorado, effective June 9, 2020.

While practicing federal immigration law in Denver, Caldbeck failed to diligently pursue his client's matter and missed critical filing deadlines. He failed to keep his client reasonably informed about the status of her case, ignoring many of her requests for information over several years. Caldbeck failed to perform the services for which he was retained, and he engaged in an ongoing pattern of neglect; he also knowingly misled and deceived his client about the status of her client matter. Finally, he knowingly converted for his own use an unearned retainer and failed to return his client's documents and funds upon termination of their attorney-client relationship

Through this conduct, Respondent violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a)(3) (a lawyer shall keep a client reasonably informed about the status of the matter); Colo. RPC 1.4(a)(4) (a lawyer shall promptly comply with reasonable requests for information); Colo. RPC 1.5(f) (a lawyer does not earn fees until a benefit is conferred on the client or the lawyer performs a legal service); Colo. RPC 1.15A(a) (a lawyer shall hold client property separate from the lawyer's own property); Colo. RPC 1.15A(b) (on 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 and, if requested, promptly render a full accounting regarding such property); Colo. RPC 1.16(d) (a lawyer shall protect a client's interests upon termination of the representation, including by giving reasonable notice to the client and returning unearned fees and any papers and property to which the client is entitled); and Colo. RPC 8.4(c) (providing that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The case file is public per C.R.C.P. 251.31. 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:** WELDON STEPHEN CALDBECK	Case Number: 19PDJ080
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)	

Weldon Stephen Caldbeck ("Respondent"), a Pennsylvania-licensed lawyer practicing immigration law in Colorado, knowingly converted for his own use an unearned retainer, failed to perform the services for which he was retained, engaged in an ongoing pattern of neglect, knowingly deceived his client, failed to diligently pursue his client's matter, missed critical filing deadlines, failed to keep his client reasonably informed about the status of her case, and failed to return his client's documents and funds upon termination of their attorney-client relationship. Respondent's misconduct warrants disbarment.

I. PROCEDURAL HISTORY

On December 11, 2019, Bryon M. Large of the Office of Attorney Regulation Counsel ("the People") filed a complaint with the Presiding Disciplinary Judge ("the Court") and sent copies of the complaint to Respondent via certified mail the same day.[1] After the due date for Respondent's answer had passed, the People sent him a reminder letter on January 3, 2020. On motion of the People, the Court entered default against Respondent on February 7, 2020. A sanctions hearing was set for April 8, 2020.

Based on the local and national response to the COVID-19 epidemic and recommendations from the Center for Disease Control and the Colorado Department of Health and Human Services, the Court temporarily suspended all in-person appearances in March 2020. The Court *sua sponte* issued an order on March 16, 2020, directing the parties to submit their exhibits and arguments on the sanctions in writing in lieu of appearing in-person at the sanctions hearing.

[1] On October 24, 2019, the Colorado Supreme Court immediately suspended Respondent from the practice of law in the State of Colorado for failing to cooperate with the People's investigation.

On April 7, 2020, the People submitted their hearing brief and "Complaining Witness's Written Statement Pursuant to C.R.C.P. 251.18(a)." Respondent did not file any documents with the Court. Nor did he otherwise contact the Court or the People.

II. ESTABLISHED FACTS AND RULE VIOLATIONS

Respondent was admitted to practice law in Pennsylvania on August 26, 1980, under Pennsylvania registration number 32027. He is not admitted in Colorado, but he maintains an office with a registered business address in Denver, where he provides and offers to provide immigration law services in Colorado. He is thus subject to the Court's jurisdiction in this disciplinary proceeding.[2]

Respondent first met with V.C. in November 2015, when they discussed whether V.C. should file a self-petition for United States residency relying on provisions of the Violence Against Women Act ("VAWA"). At that time, V.C. was married to a United States citizen with whom she had a young child. On November 10, 2015, V.C.'s spouse filed a petition for allocation of parental responsibilities, which was later converted to a dissolution of marriage proceeding.

In May 2016, V.C. signed Respondent's fee agreement, which listed the scope of work as "VAWA + Adjust Status."[3] The agreement called for a flat fee of $3,000.00 to be paid in fifteen monthly installments of $200.00 each. It also included the following language: "Our fee is earned at the time the paperwork is prepared and filed, as well as any subsequent preparation for related interviews before the agency."[4] The agreement did not contain an alternative hourly rate or any method of calculating *quantum meruit* recovery in the event of early termination.

V.C. made some, but not all, of the payments toward her $3,000.00 retainer; in total, V.C. paid Respondent at least $1,300.00.[5] Respondent did not place her funds in a Colorado trust account, as he did not maintain one. Nor did he place V.C.'s retainer payments in another trust account. Rather, he treated V.C.'s funds as earned on receipt. Even under the language of his own fee agreement, Respondent did not earn V.C.'s retainer payments because he never filed the required paperwork.

V.C. met with Respondent on June 13, 2016, to drop off documents related to her case and to sign her immigration application. She understood that the application would be

[2] *See* C.R.C.P. 251.1(b); Colo. RPC 8.5(a) ("A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction."); *see also Colorado v. Ziankovich*, No. 19-cv-03087, 2019 WL 6907460 at *2 (D. Colo. Dec. 19, 2019) (holding that the Colorado Supreme Court had jurisdiction over lawyer discipline proceedings brought against a lawyer not licensed in Colorado but practicing federal immigration law with a Colorado office and before federal courts physically located in Colorado).

[3] Compl. ¶ 17.

[4] Compl. ¶ 19.

[5] V.C. paid Respondent $500.00 in August 2016, $100.00 in both September and October 2016, $200.00 in November 2016, and at least $400.00 on unspecified dates.

filed as soon as Respondent received document translations from her, which she sent him by email on July 30, 2016.

On August 11, 2016, V.C.'s dissolution of marriage was finalized. V.C. called Respondent the same day to advise him that the divorce decree had been entered. Under the relevant VAWA provisions, V.C. had two years from August 11, 2016, to file her self-petition for residency.

On July 1, 2017, after nearly one year without contact, V.C. emailed Respondent to inquire about the status of her case. She received no response. On February 9 and 10, 2018, V.C. emailed Respondent and his assistant inquiring about the status of her immigration case and requesting a copy of her immigration application and case number. Again, she received no response. Similarly, V.C.'s email on May 18, 2018, inquiring yet again about the status of her case and her ability to acquire a driver's license, went unanswered.

On August 11, 2018, V.C.'s deadline to file her VAWA self-petition passed, two years after her divorce was finalized. Respondent never notified V.C. of this deadline.

V.C. again emailed Respondent and his assistant on September 26 and December 7, 2018, expressing frustration that she had neither received her immigration case number nor met with Respondent. Still, she did not receive a response. On January 17, 2019, V.C. sent Respondent an email stating that she stopped by Respondent's office the previous day but was unable to see him. V.C. said that she was frustrated because she had not yet been able to speak with Respondent and thus was did not know how her immigration case was progressing.

Respondent replied via email that he would set aside two hours to speak with her in person on the afternoon of Friday, January 25, 2019. V.C. agreed to travel to Denver for the meeting. The morning of the meeting, Respondent emailed V.C., stating that he would need to push the meeting back an hour from the original time and that he would not have a Spanish translator available. Respondent offered to reschedule the meeting on the following Monday. V.C. responded, advising him that she had difficulty arranging the ride to Denver and so wanted to keep the appointment. A few hours before the scheduled meeting time, Respondent emailed V.C. again, stating: "Please stop your travels today. I have to see you Monday. Must contact [assistant]. Portion of your file is not in the file. I believe [assistant] has the documents. . . ."[6]

The next day, Saturday, Respondent emailed V.C., saying that he would not be able to meet with her on Monday because his daughter was sick with pneumonia and he had to check on his own pneumonia immunization. On Sunday, Respondent emailed V.C. asking to schedule their meeting for February 1, 2019.

[6] Compl. ¶ 53.

At the meeting with V.C. on February 1, Respondent assured her that he had timely filed her VAWA self-petition in March 2018, but he offered to file another petition and an application for asylum free of charge. Respondent had not in fact filed V.C.'s VAWA self-petition in March 2018 or at any other time.

On Wednesday, February 6, 2019, Respondent emailed V.C., advising her that he would be sending out her "renewed application" in a few days.[7] V.C. replied, asking for a receipt or copy of the original application from 2018. On February 10, 2019, V.C. emailed Respondent documents in support of her application and again requested the receipt number from the prior application. On February 13, 2019, V.C. emailed Respondent inquiring as to whether Respondent had submitted the second application. Respondent did not respond to V.C.'s emails.

On February 18, 2019, V.C. emailed Respondent's assistant seeking the receipt from the VAWA application purportedly submitted in February 2019. She received no response, nor did she receive a response to her emails on February 20 and 22, 2019.

V.C. emailed Respondent and his assistant on February 24, 2019. She said that she would be traveling to Denver later that week and she asked if she to pick up her documents. On March 1, 2019, V.C. emailed Respondent again asking for copies of her file. The next day, V.C. emailed Respondent, noting that she made an appointment to meet with him on March 4, 2019. Respondent replied that he would not be in the office on that date, but he committed to driving to meet her on March 6, 2019. But Respondent later told V.C. that his new assistant would scan the documents and email them to her by March 6. As a result, he said, they would no longer need to meet as scheduled.

On March 6, 2019, at 5:11 p.m., V.C. emailed Respondent. Expressing disappointment, she said that she had not received the promised documents. The next day, V.C. emailed Respondent's legal assistant to alert him that she was still waiting for her file. The legal assistant responded that "attorney [Respondent] has your file, he will send it as soon as possible."[8]

On March 18 and April 4, 2019, V.C. yet again emailed Respondent and his staff to inquire about the status of her case and to request copies of her file. Neither Respondent nor anyone from his office responded to these emails.

Respondent never filed for V.C. any immigration application or petition with U.S. Citizen and Immigration Services, including V.C.'s VAWA self-petition.

Save for one written response on June 5, 2019, Respondent has not participated in the People's investigation. In that response, Respondent stated that he believed V.C. was ineligible to pursue a VAWA claim. But Respondent never notified V.C. that he believed she

[7] Compl. ¶ 61.
[8] Compl. ¶ 80.

was ineligible to pursue a VAWA claim. Respondent has not appeared before the Court or otherwise participated in this disciplinary matter.

Through this misconduct, Respondent violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a)(3) (a lawyer shall keep a client reasonably informed about the status of the matter); Colo. RPC 1.4(a)(4) (a lawyer shall promptly comply with reasonable requests for information); Colo. RPC 1.5(f) (a lawyer does not earn fees until a benefit is conferred on the client or the lawyer performs a legal service); Colo. RPC 1.15A(a) (a lawyer shall hold client property separate from the lawyer's own property); Colo. RPC 1.15A(b) (on 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 and, if requested, promptly render a full accounting regarding such property); Colo. RPC 1.16(d) (a lawyer shall protect a client's interests upon termination of the representation, including by giving reasonable notice to the client and returning unearned fees and any papers and property to which the client is entitled); Colo. RPC 8.4(c) (providing that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[9] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[10] 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.

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

Duty: Respondent violated multiple fundamental duties he owes as a lawyer, including his duty to safeguard his client's property, his duty of diligence, and his duty to maintain the integrity of the profession.

Mental State: By entering default, the Court deemed established the allegations in the complaint, including allegations that Respondent acted knowingly when he violated Colo. RPC 1.4(a)(3), Colo. RPC 1.4(a)(4), Colo. RPC 1.5(f), Colo. RPC 1.15A(a), Colo. RPC 1.15A(b), and Colo. RPC 8.4(c). The Court concludes that Respondent also acted knowingly when he violated Colo. RPC 1.3 and Colo. RPC 1.16(d).

Injury: Respondent caused V.C. actual injury by converting her retainer and by failing to file her VAWA self-petition before the two-year deadline expired. Additionally, Respondent caused V.C. potential injury by jeopardizing her immigration status; because this

[9] Found in *ABA Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).
[10] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

harm could result in V.C.'s deportation and forced separation from her young child, the Court considers this potential injury to be extremely serious. Respondent also undermined the public's confidence in the integrity of the legal profession, as he failed to adhere to fundamental ethical duties required of lawyers.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

Because the Court's entry of default established that Respondent violated eight different rules, several ABA *Standards* apply. All call for disbarment. ABA *Standard* 4.11 provides that disbarment is generally appropriate when a lawyer knowingly converts client property and causes the client injury or potential injury. Likewise, ABA *Standard* 4.41(b) provides that disbarment is generally appropriate when a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client. Disbarment is also appropriate under ABA *Standard* 4.41(c), which applies when a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious client injury to a client, and ABA *Standard* 4.61, which applies when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, thereby causing the client serious injury or potentially serious. Finally, ABA *Standard* 5.11(b) provides that disbarment is generally appropriate when 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.

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, while mitigating circumstances may warrant a reduction in the severity of the sanction.[11] Seven aggravating factors are present here: Respondent's dishonest or selfish motive, multiple offenses, bad faith obstruction of the disciplinary proceedings, refusal to acknowledge the wrongful nature of his conduct, the vulnerability of the victim, Respondent's substantial experience in the practice of law, and his indifference to making restitution.[12] The Court weighs the vulnerability of the victim particularly heavily, as V.C. is an immigrant with a young child seeking residency as a domestic violence victim. In mitigation, the Court considers Respondent's lack of prior discipline.[13]

Analysis Under ABA *Standards* and Colorado Case Law

[11] *See* ABA *Standards* 9.21 and 9.31.
[12] ABA *Standards* 9.22(b), (d), (e), (g), (h), (i), and (j).
[13] ABA *Standards* 9.32(a).

The Court recognizes the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[14] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[15] 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.

Here, the People request disbarment. Respondent has not participated and thus has not advocated for any alternative sanction.

In this case, multiple ABA *Standards* call for disbarment as a presumptive sanction, and case law supports imposition of that discipline.[16] Significant aggravating factors and only minimal mitigation further support disbarment. The Court thus disbars Respondent from the practice of law in the State of Colorado.

IV. CONCLUSION

Respondent transgressed eight Colorado Rules of Professional Conduct while representing a client in her immigration matter. He failed to hold his client's retainer in trust, knowingly converting the unearned funds. He failed to provide his client with diligent representation, meet critical filing deadlines, keep his client informed about her case, or respond to her reasonable requests for information. Further, he did not provide an accounting of her retainer funds, give notice of his withdrawal of representation, or surrender her file and unearned fees. Finally, Respondent engaged in dishonest conduct by omission when he knowingly elided his client's queries about the status of her immigration case. He also knowingly and actively misrepresented that her immigration case had been timely filed. Through these actions, his client was actually and potentially harmed in serious and irreparable ways. The Court concludes that Respondent should be disbarred for this conduct.

V. ORDER

The Court therefore **ORDERS**:

[14] *See In re Attorney F.*, 2012 CO 57, ¶ 20; *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).

[15] *In re Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

[16] *See In re Cleland*, 2 P.3d 700, 703 (Colo. 2008) ("[D]isbarment is the presumed sanction when a lawyer knowingly misappropriates funds belonging to a client or a third person."); *see also People v. Radosevich*, 783 P.2d 841, 842 (Colo. 1989) (conversion of client funds "destroys the trust essential to the attorney-client relationship, severely damages the public's perception of attorneys, and erodes public confidence in our legal system."); *People v. Varallo*, 913 P.2d 1, 11 (Colo. 1996) (disbarment warranted for conduct including knowing conversion); *see also People v. Nelson*, 40 P.3d 840 (Colo. O.P.D.J. 2002) (disbarment was an appropriate sanction for a lawyer whose misconduct included abandoning a client in an immigration matter and failure to communicate).

1. **WELDON STEPHEN CALDBECK**, Pennsylvania attorney registration number 32027, will be **DISBARRED FROM PRACTICING LAW IN THE STATE OF COLORADO**. The **DISBARMENT SHALL** take effect only upon issuance of an "Order and Notice of Disbarment."[17]

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 Tuesday, May 19, 2020**. Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **on or before Tuesday, May 26, 2020**. Any response thereto **MUST** be filed within seven days.

6. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a statement of costs **on or before Tuesday, May 19, 2020**. Any response thereto **MUST** be filed within seven days.

7. Restitution has been requested in this matter by Respondent's former client. The People **SHALL** submit a statement addressing whether an award of restitution is appropriate, and if so, in what amount. The People **SHALL** submit the statement, along with any supporting documentation, **on or before Tuesday, May 19, 2020.** Any response thereto **MUST** be filed within seven days.

DATED THIS 5th DAY OF MAY, 2020.

[*original signature on file]*

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

[17] In general, an order and notice of sanction 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.

Copies to:

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