***People v. Stephanie Anne Fling*. 16PDJ086. July 14, 2017.**

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Stephanie Anne Fling (attorney registration number 33066), effective August 18, 2017.

Fling was hired to represent a client in a post-decree dissolution matter involving transfer of the client's son to a new school. The client gave Fling $2,500.00 for the representation, and Fling deposited those funds into her COLTAF account. Fling took no action on the matter, even though she told the client that she would do so. Later, Fling made withdrawals from her COLTAF account, thereby knowingly converting her client's funds. She compounded this misconduct by disregarding requests for information from disciplinary authorities.

In this matter, Fling violated Colo. RPC 1.15A(a) (a lawyer shall hold client property separate from the lawyer's own property); 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:** STEPHANIE ANNE FLING	Case Number: **16PDJ086**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)	

Stephanie Anne Fling ("Respondent") was hired to represent a client in a post-decree dissolution case involving transfer of the client's son to a new school. The client gave Respondent $2,500.00 for the representation, and Respondent deposited those funds in her COLTAF account. Respondent took no action on the matter, even though she told the client that she would do so. Later, Respondent made withdrawals from her COLTAF account, thereby knowingly converting her client's funds. She compounded this misconduct by disregarding requests from disciplinary authorities for information. Respondent's misconduct, which violated Colo. RPC 1.15A(a), 8.1(b), and 8.4(c), warrants disbarment.

I. PROCEDURAL HISTORY

On August 4, 2016, Respondent was immediately suspended by the Colorado Supreme Court for refusing to cooperate in a disciplinary investigation.

On December 12, 2017, Geanne R. Moroye of the Office of Attorney Regulation Counsel ("the People") filed a complaint in this matter with Presiding Disciplinary Judge William R. Lucero ("the Court"), and sent copies of the citation and complaint via certified mail to Respondent at her registered business and home addresses. Respondent failed to answer, and the Court entered default on February 14, 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] with one exception.[2]

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

[2] The Court noted that it does not consider Colo. RPC 1.15(A)(a) a proper basis on which to allege a knowing conversion and thus declined to find that Respondent violated that rule by knowingly converting client funds, as the People pleaded in paragraph 35 of the complaint.

On May 24, 2017, the Court held a sanctions hearing under C.R.C.P. 251.15(b). Moroye represented the People, and Respondent appeared pro se. Respondent orally moved to continue the hearing so that she could retain counsel.[3] But the Court concluded that Respondent did not establish good cause for a continuance and directed the parties to present their cases. During the hearing, Kristine Nguyen and Respondent testified, and the People's exhibits 1-2 were admitted into evidence.

II. ESTABLISHED FACTS AND RULE VIOLATIONS

The Court adopts and incorporates by reference the averments in the admitted complaint. Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on October 15, 2001, under attorney registration number 33066.[4] She is thus subject to the Court's jurisdiction in this disciplinary proceeding.[5]

In March 2011, Kristine Nguyen and her then-husband, Huy Pham, jointly filed a petition for dissolution in Jefferson County District Court. Neither party was represented by counsel. They entered into a separation agreement that provided for shared custody of their sole child, a son. A decree of dissolution was granted on August 25, 2011.

In August 2013, their son began attending elementary school at Bradford Primary in Littleton, Colorado. One year later, Nguyen moved from her home in Littleton to a home in Aurora so that she could be closer to her mother, who had become ill. From August 2014 to November 2015, Nguyen drove her son to Bradford Primary, a drive that she contends took forty minutes and that required an $8.00 toll each way. In November 2015, she transferred her son to a school in Aurora.

On November 23, 2015, Pham filed a pro se motion to transfer their son back to Bradford Primary. He claimed that Nguyen had transferred their son to a new school without his permission or knowledge, and that she refused to tell him the location of the new school. He claimed that the transfer affected his parenting time. Pham did not indicate an address for Nguyen in the motion.

On December 9, 2015, Nguyen asked Respondent to represent her in the matter. Respondent agreed and emailed a fee agreement, which called for a $2,500.00 flat fee for representation "regarding a Motion for Return of Child and Motion to Modify Child Support in Jefferson County Colorado."[6] The agreement set forth the following benchmarks:

[3] Respondent notified the People only two days before the hearing that she would attend and seek a continuance. According to the People, they urged Respondent to file a written motion in advance of the hearing, noting that their complaining witness planned to take time off work to attend the hearing, but Respondent never filed any written motion, instead waiting until the hearing to move for the continuance.
[4] Compl. ¶ 1.
[5] *See* C.R.C.P. 251.1(b).
[6] Compl. ¶ 10.

- $1,000.00 upon Respondent's entry of appearance, review of the file, and submission of a motion for return of child and a motion of modification of child support;
- $1,000.00 upon receipt and review of Nguyen's financial disclosures, and receipt and review of Pham's financial disclosures or a motion to compel or interrogatories; and
- $500.00 upon withdrawal of counsel at the end of the case.

On December 12, 2015, Nguyen signed the fee agreement. She mailed it back to Respondent on December 18, 2015, along with a copy of Pham's motion, other evidence, and a $2,500.00 check.

Respondent did not enter her appearance or file anything with the court. Nor did she inform Nguyen when a response to Pham's motion was due. Even so, on December 22, 2015, Respondent deposited Nguyen's $2,500.00 into her COLTAF account at BBVA Compass Bank. The balance of the account before Respondent's deposit of Nguyen's funds was $157.30. The same day, the magistrate issued an order granting Pham's motion, ruling that the parents shared joint decision-making, Nguyen's unilateral change of the child's school was not permitted, and the child would have to be reenrolled in his previous school. The order directed any appeal to be filed within twenty-one days. The magistrate's order was mailed to Nguyen's last-known address. The envelope was returned as nondeliverable.

From December 18 through 24, 2015, Nguyen left voicemail and text messages for Respondent, who did not return any of the messages. On December 24, Respondent returned Nguyen's call, promising to draft a response to the motion in thirty minutes. But she did not draft the motion. On December 26, Nguyen left Respondent a voicemail message stating that she would void their contract if Respondent did not respond.

The next day, Respondent emailed Nguyen. She said that she would figure out why Nguyen had not received her earlier email containing the draft response. Nguyen is adamant that Respondent never emailed her any document. Respondent also stated: "You will receive the Response Motion for Telephone Testimony even though now that I have entered my appearance and got a copy of the Complaint, it may be that your son will be necessary at this Contempt hearing. Sworn Financial Statement to update in about 15 days."[7] Respondent also noted, "I would have preferred not to reset the date immediately, but to have reset it for the Permanent Orders date when we have one as we discussed. Please rest assured that the Clerk has not been available since last Wednesday morning and we are fine and in target with our preparation."[8] The email made no sense to Nguyen, as her matter was post-decree. Nguyen believed that Respondent had confused her case with another.

Nguyen replied to the email the same day, stating that the email was confusing, terminating the representation, and asking for the return of her $2,500.00. She gave

[7] Compl. ¶ 20.
[8] Compl. ¶ 20.

Respondent a deadline of the following Tuesday to return the money. Respondent did not respond. On December 28, 2015, Nguyen left a voicemail message for Respondent, demanding to make arrangements to meet so that she could get her money back. Again, Respondent did not respond.

Respondent retained funds in her COLTAF account sufficient to cover Nguyen's retainer until January 28, 2016, when she withdrew $1,312.50 in two separate online transfers. The balance of the COLTAF account then dipped to $1,344.80. At that point, Respondent effectively converted $1,155.20 of Nguyen's funds.

On January 4, 2016, Respondent emailed Nguyen: "Billing is completed this week and your refund will be calculated and returned first so[] you should have your refund in about 3 days given time for the postal service to deliver."[9] Nguyen retorted via email that there was nothing for Respondent to calculate because Respondent had performed no work. Nguyen never received a refund from Respondent.

Also on January 4, 2016, Nguyen filed a motion to reconsider the magistrate's order. As grounds, she noted that Respondent had failed to act, attaching a listing of all of the attempted communications with Respondent and stating that she had filed a grievance against Respondent. About two weeks later, the magistrate denied Nguyen's request to reconsider, reasoning that she lacked authority to reconsider. She advised the parties that they had twenty-one days to appeal. Nguyen then filed her own motion to transfer her child to a school in Aurora, and the parties were directed to set a mediation.

On February 25, April 19, April 25, and May 5, 2016, Respondent withdrew additional COLTAF funds belonging to Nguyen, leaving a balance of just $19.30. Respondent thus converted $2,480.70 of Nguyen's retainer.

Later, Respondent failed to respond to requests for information from the People.

As established in the complaint, Respondent violated Colo. RPC 1.15A(a), which requires a lawyer to hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property; Colo. RPC 8.1(b), which prohibits a lawyer from knowingly failing to respond to a lawful demand for information from disciplinary authorities; and Colo. RPC 8.4(c), which forbids lawyers from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Respondent's Testimony

Despite defaulting in this proceeding, Respondent appeared at the sanctions hearing and offered testimony in mitigation.

[9] Compl. ¶ 24.

According to Respondent, until her misconduct in Nguyen's case she had practiced law without incident since 2001. In autumn 2014, she was fired from her position at a large law firm and decided to open shop as a solo practitioner.

Two to three years ago, her eldest son was injured during a tour of duty in Afghanistan. She spent some time helping him to recuperate. In April 2015, her youngest son was injured during a tour of duty. Until he returned to the United States on May 23, 2017, he had been recovering from his injuries overseas.

Around the same time that her elder son was injured, Respondent reconciled with her own mother, from whom she had been estranged for ten years. Respondent's mother was largely independent, but because she suffered from what Respondent characterized as a "drinking problem," Respondent checked in on her almost daily. In January 2016, Respondent testified, her mother fell twice; as a result, she lost a lot of her memory and was unable to bathe herself. She passed away in April 2016. Respondent testified that she spent the money she had—including, presumably, Nguyen's retainer—on her mother's funeral expenses. In November 2016, Respondent was ordered to remit $2,500.00 to the Attorneys' Fund for Client Protection as restitution, after the Fund had awarded Nguyen reimbursement in the same amount.[10] Respondent ultimately complied, issuing a check to the Fund on February 21, 2017.[11]

Respondent expressed contrition for her misconduct. She acknowledged that she was "so bound up" in her "own things" that she was overwhelmed; that she was "selfish and inconsiderate"; that her actions were wrong; and that she is very sorry that Nguyen was affected negatively.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[12] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[13] 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's conversion of client funds violated her duty of loyalty and her duty to preserve client property, and her failure to respond to the People's inquiries fell afoul of her duties as a professional.

[10] Ex. 1.
[11] Ex. 2.
[12] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).
[13] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

Mental State: The Court's order entering default establishes that Respondent knowingly converted Nguyen's funds in violation of Colo. RPC 8.4(c) and knowingly disregarded the People's requests for information in violation of Colo. RPC 8.1(b).

Injury: Respondent's conversion of Nguyen's funds seriously harmed Nguyen financially. Nguyen testified that she paid Respondent $2,500.00 in part from her savings and in part from a loan from her family. As a single mother whose own mother was in the latter stages of Alzheimer's, Nguyen said, $2,500.00 was "a lot of money" to her family. Respondent's conversion of her money also exacted a legal and emotional toll on Nguyen. To pay that kind of fee but not receive any help or communication was "very stressful," Nguyen explained. She spent many sleepless nights, worried, not knowing what to do. Ultimately, she was forced to proceed with her case pro se. Nguyen testified that she has spent a lot of time at court on her own but is "still in the middle" of sorting out her continuing legal issues, which stemmed from Pham's motion and Respondent's failure to respond. Nguyen noted that Respondent's misconduct shook her faith in the legal community.

Respondent's failure to comply with her obligation to respond to requests for information caused the legal profession harm.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

ABA *Standard* 4.11 applies here. That *Standard* calls for disbarment when a lawyer knowingly converts client property and causes injury or potential injury to a client.

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.[14] Three aggravating factors are present here. First, Respondent's knowing conversion of funds evinces a dishonest and selfish motive.[15] The Court attributes great weight to this factor. Second, Respondent violated several ethical rules.[16] Third, Respondent has substantial experience in the practice of law.[17] These last two factors are entitled to average weight.

[14] *See* ABA *Standards* 9.21 & 9.31.
[15] ABA *Standard* 9.22(b).
[16] ABA *Standard* 9.22(d).
[17] ABA *Standard* 9.22(i). Although the People request application of ABA *Standard* 9.22(e), the Court finds that Respondent's failure to participate in the proceeding is addressed by the Colo. RPC 8.1(b) charge, and the Court has no evidence that she otherwise intentionally acted in bad faith. The Court also declines to apply ABA *Standard* 9.22(g), refusal to acknowledge the wrongful nature of misconduct. The Court found Respondent to be remorseful.

The Court takes into account three mitigating factors. Respondent has no prior disciplinary history.[18] During the time of her misconduct, she suffered from personal and emotional problems, namely the difficulty in caring for her elderly mother and the stress occasioned by her sons' combat injuries.[19] The Court gives this factor only limited weight. Respondent introduced no corroborating evidence to support her testimony on these matters, and the timeline that she provided concerning her sons' injuries (and those injuries' effect on her practice) was so hazy as to preclude the Court from establishing a meaningful causal link between these events and her misconduct. Finally, the Court finds Respondent's expressions of remorse credible and accords her limited mitigating credit on this score.[20]

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,[21] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[22] 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.

Knowing misappropriation of client funds "consists simply of a lawyer taking a client's money entrusted to [her], knowing that it is the client's money and knowing that the client has not authorized the taking."[23] Misappropriation includes the unauthorized temporary use of client funds for the lawyer's own purposes, whether or not the lawyer derives any personal benefit from that use.[24] When finding knowing conversion, the Court need not determine *how* the attorney used client funds.[25]

The Colorado Supreme Court has made clear that "[i]n situations where a lawyer knowingly misappropriates client funds, the appropriate sanction is typically disbarment."[26] Where conversion of client funds is coupled with other rule violations—particularly the

[18] ABA *Standard* 9.32(a).
[19] ABA *Standard* 9.32(c).
[20] ABA *Standards* 9.32(*l*).
[21] *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).
[22] *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[23] *People v. Varallo,* 913 P.2d 1, 11 (Colo. 1996).
[24] *Id.*
[25] *People v. Wechsler*, 854 P.2d 217, 220 (Colo. 1993).
[26] *In re Haines*, 177 P.3d 1239, 1250 (Colo. 2008); *see also In re Cleland*, 2 P.3d 700, 703 (Colo. 2000) (holding that the presumed sanction for knowing misappropriation of client funds is disbarment); *People v. Coyne*, 913 P.2d 12, 14 (Colo. 1996) (disbarring a lawyer for misappropriating funds held in escrow and failing to return funds a client had advanced); *Varallo,* 913 P.2d at 11 (finding that lawyers are "almost invariably disbarred" for knowing conversion of client funds, regardless of whether the lawyer intended to permanently deprive the client of those funds); *cf. In re Fischer,* 89 P.3d 817, 822 (Colo. 2004) (noting that mitigating factors may warrant a departure from a presumption of disbarment in some cases).

lawyer's failure to cooperate with or respond to a lawful request from the disciplinary authority—the Colorado Supreme Court has had no difficulty imposing disbarment.[27]

Here, Respondent converted Nguyen's funds and used them for her own purposes. Accordingly, the presumptive sanction is disbarment. Significant mitigating factors may overcome the presumption of disbarment,[28] but the few at work in this case do not rise to the level of justifying a reduction in the sanction imposed.[29] Three aggravating factors—one of which the Court weighs heavily—pertain here, while three countervailing mitigators apply—two of which the Court weighs lightly. While the Court is sympathetic to Respondent's personal circumstances, her testimony lacked evidentiary support and failed to establish a causal (or even temporal) connection between her family's struggles and her ethical lapses. When considered in conjunction with her unexplained failure to participate in her disciplinary proceeding until the very last possible opportunity, the Court must conclude that Respondent's misconduct warrants disbarment.

IV. CONCLUSION

Although the Court appreciates the courage Respondent exhibited by appearing at her sanctions hearing after default had entered, it cannot ignore the very serious misconduct that she committed: she knowingly converted her client's funds and knowingly ignored the People's requests for information throughout her disciplinary proceeding. Because the aggravating factors are too serious—and the mitigating factors too insubstantial—to justify deviation from the presumed sanction, the Court concludes that Respondent should be disbarred from the practice of law.

V. ORDER

The Court therefore **ORDERS:**

1. **STEPHANIE ANNE FLING**, attorney registration number **33066**, will be **DISBARRED FROM THE PRACTICE OF LAW**. The **DISBARMENT SHALL** take effect only upon issuance of an "Order and Notice of Disbarment."[30]

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.

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[27] *See, e.g., In re Stevenson*, 979 P.2d 1043, 1045 (Colo. 1999).

[28] *See Fischer*, 89 P.3d at 822 (finding significant facts in mitigation to justify suspension, rather than disbarment)

[29] *See People v. Guyerson,* 898 P.2d 1062, 1064-65 (Colo. 1995) (concluding presence of substantial personal and emotional problems, cooperation with the hearing board, presence of remorse, and evidence of respondent's good character insufficient to overcome presumption of disbarment for conversion).

[30] 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.

3. Respondent **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 28, 2017**. Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **on or before August 4, 2017**. 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 July 28, 2017**. Any response thereto **MUST** be filed within seven days.

DATED THIS 14th DAY OF JULY, 2017.

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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