

People v. Duitch, 06PDJ042 (consolidated with 06PDJ097, 07PDJ003, and 07PDJ017). November 27, 2007. Attorney Regulation.

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Robert M. Duitch (Attorney Registration No. 09313) from the practice of law, effective December 28, 2007. Respondent knowingly converted funds belonging to several clients and knowingly failed to perform services in their cases. He also failed to participate in these proceedings. The facts admitted by default proved numerous violations of C.R.C.P. 251.5(d), Colo. RPC 1.3, 1.4(a), 1.4(b), 1.15(a), 1.15(b), 1.16(d), 3.4(c), 8.4(c) and 8.4(d). Accordingly, the Presiding Disciplinary Judge found no adequate basis to depart from the presumptive sanction of a suspension.

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: ROBERT M. DUITCH.	Case Number: 06PDJ042 (consolidated with 06PDJ097, 07PDJ003, and 07PDJ017)
REPORT, DECISION, AND ORDER IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.19(c)	

On September 11, 2007, the Presiding Disciplinary Judge (“the Court”) held a Sanctions Hearing pursuant to C.R.C.P. 251.18(d). Kim E. Ikeler appeared on behalf of the Office of Attorney Regulation Counsel (“the People”). Robert M. Duitch (“Respondent”) did not appear, nor did counsel appear on his behalf. The Court issues the following “Report, Decision, and Order Imposing Sanctions Pursuant to C.R.C.P. 251.19(c).”

I. ISSUE

Disbarment is the presumptive sanction when a lawyer knowingly converts client funds or knowingly fails to perform services for a client and causes serious or potentially serious injury. Respondent knowingly converted funds belonging to several clients and knowingly failed to perform services in their cases. He also failed to participate in these proceedings. Is disbarment the appropriate sanction in this case?

SANCTION IMPOSED: ATTORNEY DISBARRED

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

The People filed a complaint in 06PDJ042 on June 13, 2006, in 06PDJ097 on November 30, 2006, in 07PDJ003 on January 29, 2007, and in 07PDJ017 on March 13, 2007.¹ Respondent failed to file an answer in any of

¹ The People filed their “First Amended Complaint” in 06PDJ042 on June 23, 2006.

the cases and the Court granted motions for default on November 17, 2006 (06PDJ042), January 31, 2007 (06PDJ097), March 28, 2007 (07PDJ003), and May 22, 2007 (07PDJ017). The Court consolidated these cases into 06PDJ042 on January 31, 2007 (06PDJ097), February 22, 2007 (07PDJ003), and April 9, 2007 (07PDJ017). Upon the entry of default, the Court deems all facts set forth in the complaints admitted and all rule violations established by clear and convincing evidence. *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

The Court hereby adopts and incorporates by reference the factual background of this case fully detailed in the admitted complaints.² Respondent took and subscribed the oath of admission and gained admission to the Bar of the Colorado Supreme Court on December 22, 1978. He is registered upon the official records of the Colorado Supreme Court, Attorney Registration No. 09313 and is therefore subject to the jurisdiction of the Court.

Case Number 06PDJ042

In August 1999, Respondent entered his appearance in a bankruptcy proceeding on behalf of Terry A. Sanoff. The bankruptcy court placed the case in abeyance for a period time and later reactivated it on May 17, 2003. After the bankruptcy court reactivated the case, Respondent failed to respond to correspondence from Plaintiff's counsel, failed to communicate with his client, failed to respond to pleadings, and failed to comply with several orders from the bankruptcy court. On May 28, 2004, the bankruptcy court entered judgment against Ms. Sanoff in the amount of \$723,156.50. Respondent also initially failed to return Ms. Sanoff's file when she requested it in August 2004, but eventually returned it on December 30, 2004.

Respondent's conduct in the Sanoff matter caused Mr. Sanoff actual harm and violated Colo. RPC 1.3, Colo. RPC 1.4(a) and (b), Colo. RPC 1.16(d), Colo. RPC 3.4(c) and Colo. RPC 8.4(d).

Case Number 06PDJ097

In March 2003, Carl Peterson retained Respondent and paid him a \$2,500.00 retainer fee. Mr. Peterson had hired Respondent because he had been concerned that he might become involved in his son's bankruptcy proceeding. After his son received a discharge in November 2005, Mr. Peterson wrote to Respondent and requested the return of his retainer fee. Despite numerous efforts by Mr. Peterson and his new attorney, Respondent failed to return any portion of the retainer fee. Further, Mr. Peterson never received a bill or accounting from Respondent for any completed services.

² See the People's complaints in 06PDJ042, 06PDJ097, 07PDJ003, and 07PDJ017.

Respondent's conduct in the Peterson matter caused Mr. Peterson actual harm and violated Colo. RPC 8.4(c), Colo. RPC 1.15(a), and Colo. RPC 1.16(d).

Case Number 07PDJ003

Jahner Matter

In September 2005, Phredirick and Patricia Jahner retained Respondent and paid him a \$4,200.00 retainer fee. The Jahners and their creditors thereafter experienced difficulty in communicating with Respondent. On October 16, 2006, the Jahners terminated the attorney-client relationship, requested that Respondent forward their file to another lawyer, provide an accounting, and return the unearned portion of their retainer. Respondent failed to complete any of these tasks, and in turn violated Colo. RPC 1.3, 1.16(d), 1.15(b), and 8.4(c).

Musso Matter

John Musso, the Trustee of the Musso Family Trust, retained Respondent to serve as substitute counsel in a civil action on behalf of the Trust. Mr. Musso paid Respondent a \$2,000.00 retainer fee in January 2006, \$1,000.00 in April 2006, and \$7,500.00 in May 2006. Respondent thereafter failed to respond to a motion for summary judgment, and the trial court entered a judgment against the Trust in the amount of \$27,678.56. On October 3, 2006, Mr. Musso wrote to Respondent, terminated the attorney-client relationship, and requested that he return his file and retainer fee. Respondent failed to complete any of these tasks, and in turn violated Colo. RPC 1.3, 1.16(d), 1.15(b), and 8.4(c).

Granite Matter

In January 2006, Debi Granite retained Respondent and paid him a \$6,000.00 retainer fee to represent her in a bankruptcy proceeding filed by her ex-husband. Respondent entered his appearance in the bankruptcy case, and filed an Objection to the Debtor's Chapter 13 Plan. He also filed an Amended Proof of Claim on Ms. Granite's behalf. These services were worth significantly less than \$6,000.00.

Ms. Granite's ex-husband eventually decided to dismiss the bankruptcy case. Beginning in September 2006, Ms. Granite requested that Respondent return to her the unused portion of the retainer fee. Respondent failed to return the unused portion of the retainer fee, and in turn violated Colo. RPC 1.16(d), Colo. RPC 1.15(b), and Colo. 8.4(c).

Case Number 07PDJ017

Holtzen Matter

On March 3, 2006, Joe and Judy Holtzen retained Respondent to file a civil lawsuit on their behalf and paid him a \$5586.00 retainer fee. With Respondent's consent, the Holtzens attempted to negotiate on their own with the defendant. When their efforts proved fruitless, the Holtzens instructed Respondent to commence litigation. Respondent failed to commence litigation and failed to reply to communications from the Holtzens. Respondent therefore violated Colo. RPC 1.3, Colo. RPC 1.16(d), Colo. RPC 1.15(b), and Colo. RPC 8.4(c).

Woods Matter

On June 28, 2006, Respondent called Lois Woods and requested an emergency loan of \$20,000.00. Respondent promised to repay Ms. Woods within a month from the proceeds of the refinance of his house. Respondent had represented Ms. Woods, a number of her businesses, and a family trust in the past.

Ms. Woods was thereafter unable to contact Respondent. Near the time Respondent solicited the loan from Ms. Woods, he had lost several important clients, his law practice had shrunk, and his residence had been foreclosed. Thus, he knew or reasonably should have known that he could not repay the loan to Ms. Woods at the time has asked for it. His actions therefore violated Colo. RPC 1.16(d) and Colo. RPC 8.4(c).

Wiege Matter

In 2001, Mike Wiege retained Respondent on behalf of Spa Palace and paid him a \$3,375.00 retainer fee to collect a debt owed to them by Hendo's Spas. Respondent negotiated a partial payment to Spa Palace and then filed a lawsuit for the remaining balance. He thereafter failed to take any further action in the litigation. On May 2, 2002, the trial court dismissed the litigation for lack of prosecution. Spa Palace endeavored to contact Respondent to learn the status of the litigation, but Respondent failed to reply for months. Respondent met with Spa Palace a few times and even promised to schedule arbitration with Hendo's Spas. In subsequent meetings with Mr. Wiege, Respondent made false statements regarding the scheduling of this arbitration.

Respondent later offered to re-file the matter and prosecute it without charge on the condition that Mr. Wiege not contact the People. Respondent re-filed the case, but never obtained service on Hendo's Spas. During the next several months, Mr. Wiege continued to press Respondent for reports on the progress of the litigation. Respondent offered a series of excuses, including

that he had moved his office and that he had been having trouble with his phone service.

In November 2006, Mr. Wiege terminated Respondent as counsel for Spa Palace in the litigation. Mr. Wiege wrote to Respondent, requested the return of the file, requested an accounting of his work on the litigation, and a refund of the retainer fee. Respondent failed to complete any of these tasks. His conduct violated Colo. RPC 1.16(d), Colo. RPC 1.15(b), Colo. RPC 8.4(c) (knowing conversion), Colo. 8.4(c) (dishonesty), and Colo. RPC 1.3.

Wilkins Matter

On August 2, 2006, Laura Wilkins retained Respondent and paid him a \$3,600.00 retainer fee to represent her in a case related to her divorce. After taking her retainer fee, Respondent failed to return Ms. Wilkins' phone calls or otherwise perform services in the case, other than filing an Answer with three substantive paragraphs. On January 3, 2007, Respondent was immediately suspended from the practice of law. Despite his immediate suspension, Respondent failed to return any portion of Ms. Wilkins' retainer fee. Respondent therefore violated Colo. RPC 1.16(d), Colo. RPC 1.15(b), Colo. RPC 8.4(c), and Colo. RPC 1.3.

III. SANCTIONS

The ABA Standards for Imposing Lawyer Sanctions (1991 & Supp. 1992) ("ABA *Standards*") and Colorado Supreme Court case law are the guiding authorities for selecting and imposing sanctions for lawyer misconduct. *In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003). In imposing a sanction after a finding of lawyer misconduct, the Court must first consider the duty breached, the mental state of the lawyer, the injury or potential injury caused, and the aggravating and mitigating evidence pursuant to ABA *Standard* 3.0.

Respondent's failure to participate in these proceedings leaves the Court with no alternative but to consider only the established facts and rule violations set forth in the complaints in evaluating the first three factors listed above. The Court finds Respondent violated duties owed to his clients, the public, and the legal system. Respondent specifically violated his duty to preserve the property of his clients, failed to act with reasonable diligence while representing his clients, and failed to maintain his personal integrity. The entries of default established that Respondent *knowingly* engaged in this conduct and caused significant actual harm to his clients.

The Court finds several aggravating factors exist including dishonest or selfish motive, multiple offenses, substantial experience in the practice of law, and indifference to making restitution. *See* ABA *Standards* 9.22(b), (d), (i) and (j). Due in part to the absence of any contradictory evidence, the Court finds

clear and convincing evidence to support each aggravating factor. Respondent presented no evidence in mitigation.

The *ABA Standards* suggest that the presumptive sanctions for the misconduct evidenced by the admitted facts and rule violations in this case range from suspension to disbarment. However, the most egregious conduct was Respondent's knowing conversion of multiple client funds. Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client. *ABA Standard* 4.11.

In the absence of significant mitigating factors, Colorado Supreme Court case law applying the *ABA Standards* holds disbarment is the presumptive sanction for conversion of client funds alone. Knowing conversion or misappropriation of client money "consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking." *People v. Varallo*, 913 P.2d 1, 11 (Colo. 1996). Neither the lawyer's motive in taking the money, nor the lawyer's intent regarding whether the deprivation is temporary or permanent, are relevant for disciplinary purposes. *Id.* at 10-11. Significant mitigating factors may overcome the presumption of disbarment, however, none are presented in this case. See *In re Fischer*, 89 P.3d 817 (Colo. 2004) (finding significant facts in mitigation).

Respondent took retainers from his clients with the expectation that he would handle their cases. His failure to return these retainers upon the termination of his representation or abandonment alone warrants disbarment. This case presents classic examples of embezzlement and deceit. His additional misconduct in neglecting these clients reinforces the conclusion that disbarment is the appropriate sanction in this case. Finally, Respondent's complete failure to participate in these proceedings further precludes any deviation from the presumptive sanction.

IV. CONCLUSION

One of the primary goals of our disciplinary system is to protect the public from lawyers who pose a danger to them. The facts established in the complaint, without explanation or mitigation, reveal the serious danger Respondent poses to the public. He knowingly converted client funds and abandoned his clients and this misconduct adversely reflects on her fitness to practice law. Absent extraordinary factors in mitigation not presented here, the *ABA Standards* and Colorado Supreme Court case law applying the *ABA Standards* both support disbarment. Upon consideration of the nature of Respondent's misconduct, his mental state, the significant harm and potential harm caused, and the absence of mitigating factors, the Court concludes there is no justification for a sanction short of disbarment.

