People v. Post, GC98B102 (consolidated with GC98B122, 99PDJ031, 00PDJ002, and 00PDJ063), 5/15/01. Attorney Regulation. The Presiding Disciplinary Judge and Hearing Board disbarred Respondent, Daniel J. Post for conduct arising from nineteen different matters, including Post's neglect of client matters, failure to communicate with clients, failure to return client property and funds, failure to provide competent representation to clients, engaging in dishonesty and misrepresentations in dealings with clients, and conversion of clients' funds. Post's conduct violated Colo. RPC 1.1(failing to provide competent legal representation), Colo. RPC 1.3(neglect of a legal matter), Colo. RPC 1.4(a)(failing to communicate with a client), Colo. RPC 1.5(a)(charging an unreasonable fee), Colo. RPC 1.16(d)(failing to surrender papers and property upon termination), Colo. RPC 1.15(b)(failing to account for and provide funds or other property upon request by client), Colo. RPC 8.4(c)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), Colo. RPC 8.4(d)(engaging in conduct that is prejudicial to the administration of justice), and Colo. RPC 8.4(h)(engaging in conduct that reflects on the lawyer's fitness to practice law). Post was ordered to pay restitution to his clients and pay the costs of the proceeding.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 600 17TH STREET, SUITE 510-S DENVER, CO 80202	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** DANIEL J. POST	Case Number: GC98B102 (consolidated with GC98B122, 99PDJ031, 00PDJ002, and 00PDJ063)
OPINION AND ORDER IMPOSING SANCTIONS	

Opinion issued by Presiding Disciplinary Judge Roger L. Keithley and Hearing Board members Edwin S. Kahn and Marilyn J. David, both members of the bar.

SANCTION IMPOSED: ATTORNEY DISBARRED

This matter was heard on March 27, 2001, before the Presiding Disciplinary Judge ("PDJ") and two hearing board members, Edwin S. Kahn and Marilyn J. David, both members of the Bar. Gregory G. Sapakoff, Assistant Regulation Counsel, represented the People of the State of Colorado (the "People"). Daniel J. Schendzielos represented respondent, Daniel J. Post ("Post") who was also present. This matter is the consolidation of the claims originally alleged in five separate complaints. The parties filed a Stipulation of Facts and Admission of Misconduct with respect to the allegations contained in the complaints in all of the consolidated matters.

The People's exhibit 1 and Respondent's exhibits A, B and C were admitted into evidence. The PDJ and Hearing Board heard testimony from the People's witnesses Daniel J. Post, Betty Drake and Dr. Gary S. Gutterman, and Respondent's witnesses Dr. Robert A. Kooken and Dr. Robert Boyle. Respondent Post testified on his own behalf. The PDJ and Hearing Board considered argument of counsel, the exhibits admitted, assessed the credibility of the witnesses, the Stipulation of Facts and Admission of Misconduct filed September 1, 2000, and made the following findings of fact which were established by clear and convincing evidence.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

On September 1, 2000, Post and the People submitted the following Stipulation of Facts and Admission of Misconduct in these consolidated proceedings. The facts and admissions of misconduct set forth therein are therefore findings of fact and conclusions of law for purposes of this Opinion and Order.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE Complainant: THE PEOPLE OF THE STATE OF COLORADO Respondent: DANIEL JEFFERSON POST	COURT USE ONLY

Gregory G. Sapakoff, #16184 Assistant Regulation Counsel Attorney for Complainant 600 17th Street, Suite 200-South Denver, Colorado 80202 Phone Number: (303) 893-8121, ext. 327 Fax Number: (303) 893-5302 Daniel J. Schendzielos, #22542 Attorney for Respondent 1602 South Parker Road, Suite 203 Denver, Colorado 80231 Phone Number: (303) 750-3015 Fax Number: (303) 369-7848	Case Numbers: GC98B-102 (Consolidated with GC98B-122); 99PDJ031; 00PDJ002 and 00PDJ063)

STIPULATION OF FACTS AND ADMISSION OF MISCONDUCT

On this _____ day of August, 2000, Gregory G. Sapakoff, Assistant Regulation Counsel and attorney for the complainant, Daniel J. Schendzielos attorney for respondent, and Daniel Jefferson Post, the respondent enter into the following Stipulation of Facts and Admission of Misconduct and submit the same for purposes of the above-captioned disciplinary proceedings to the Presiding Disciplinary Judge for his consideration.

RECOMMENDATION:

1. The respondent has taken and subscribed the oath of admission, was admitted to the bar of this court on January 10, 1992, and is registered as an attorney upon the official records of this court, registration no. 21174. The respondent is subject to the jurisdiction of this court and the Presiding Disciplinary Judge in these proceedings.

2. The respondent enters into this stipulation freely and voluntarily. No promises have been made concerning future consideration, punishment, or lenience in the above-referenced matter. It is the respondent's personal decision, and the respondent affirms there has been no coercion or other intimidating acts by any person or agency concerning this matter.

3. This matter has become public under the operation of C.R.C.P. 251.31.

4. The respondent is familiar with the rules of the Colorado

Supreme Court regarding the procedure for discipline of attorneys and with the rights provided by those rules. The respondent acknowledges the right to a full and complete evidentiary hearing on all issues raised in the above-referenced disciplinary matters. At any such hearing, the respondent would have the right to be represented by counsel, present evidence, call witnesses, and cross-examine the witnesses presented by the complainant. At any such formal hearing, the complainant would have the burden of proof and would be required to prove the charges contained in the complaints with clear and convincing evidence. Nonetheless, having full knowledge of the right to such a formal hearing on all issues, the respondent waives that right with respect to the facts and disciplinary violations to which he stipulates in this Stipulation of Facts and Admission of Misconduct.

5. The respondent has read and studied the complaints file in case numbers GC98B-102, GC98B-122, 99PDJ031, 00PDJ002, and 00PDJ063, and is familiar with the allegations therein.

6. With respect to the allegations contained in all of these complaints, the respondent affirms under oath that the following facts and conclusions are true and correct.

Ruby Shaffer Matter

a. In October 1995, Ruby Shaffer retained the respondent to represent her in a dispute with Rhonda Warnke concerning the sale of two horses.

b. Ms. Shaffer paid the respondent a flat fee of $450.00. This is the amount the respondent agreed to accept for representation throughout the case.

c. In October 1995, the respondent filed a complaint in *Shaffer v. Warnke*, Case No. 95CV480, Weld County District Court.

d. The complaint in Case No. 95CV480 alleged breach of contract, and sought revocation of the contracts between Ms. Shaffer and Ms. Warnke, together with stable fees and costs incurred by Ms. Shaffer.

e. In October 1995, the court entered a temporary restraining order in favor of Ms. Shaffer pursuant to a motion filed by the respondent whereby Ms. Shaffer was allowed possession of the horses while the case was pending, but was prohibited from selling the horses.

f. In November 1995, Andrew Rosen, Esq., counsel for Ms. Warnke, filed an answer and counterclaim in Case No. 95CV480.

g. On December 13, 1995, the respondent filed a reply to the counterclaim.

h. After filing the reply to the counterclaim on December 13, 1995, the respondent took no further action of record in Ms. Shaffer's case for more than one year.

i. During the first half of 1996, Ms. Shaffer called the respondent's office frequently to determine the status of her case. The respondent failed to return her telephone calls.

j. The respondent's secretary at the time, Susan Alkire, took several of Ms. Shaffer's calls and gave the messages to the respondent. Ms. Alkire relayed to the respondent Ms. Shaffer's frustration that the respondent would not return her telephone calls, and that Ms. Shaffer needed to speak to the respondent about selling one of the horses.

k. In June 1996, Ms. Shaffer wrote a letter directly to the Honorable William West, the presiding judge in her case, because she had not been able to get the respondent to return calls to answer questions she had concerning the sale of one of the horses. In her letter, Ms. Shaffer expressed her frustration with the respondent and her concern about the mounting costs of boarding the horses, and asked the judge whether she could sell one of the horses.

l. In response to Ms. Shaffer's letter, Judge West stated that he could not advise her in the matter, and that she was free to retain different counsel.

m. In the summer of 1996, Ms. Shaffer sold one of the horses that were the subject of the litigation, prompting contempt proceedings against her.

n. On January 9, 1997, the court in Ms. Shaffer's case ordered the respondent to set the case for trial. Prior to that date, the respondent had never filed a notice to set the case for trial.

o. On January 15, 1997, a trial date was set in Ms. Shaffer's case for April 4, 1997.

p. During his representation of Ms. Shaffer, the respondent did not conduct any discovery.

q. During his representation of Ms. Shaffer, the respondent did not provide any disclosures to the opposing party, pursuant to C.R.C.P. 26.

r. During his representation of Ms. Shaffer, respondent prepared neither a case management order nor a timely trial management order.

s. During the trial in Ms. Shaffer's case, the respondent called no witnesses other than Ms. Shaffer.

t. During the trial in Ms. Shaffer's case, the respondent did not present the documentary evidence given to him by his client concerning boarding expenses and stable fees incurred by Ms. Shaffer during the litigation.

u. At the conclusion of the trial in Ms. Shaffer's case, the court entered judgment in favor of Ms. Warnke and against Ms. Shaffer on Ms. Warnke's counterclaim for wrongful replevin. The court awarded Ms. Warnke damages of $3,936.66, together with costs of $912.50 and attorney fees of $6,712.00.

v. After the trial, Ms. Shaffer retained Charles Unfug, Esq., to seek post-judgment relief on her behalf.

w. Pursuant to a motion filed by Mr. Unfug, Judge West overturned the award of attorney fees. The judge also ruled that Ms. Shaffer was entitled to some damages for Ms. Warnke's breach of contract, but still refused to award damages for the boarding expenses incurred while the case was pending, based upon the lack of any evidence presented on the issue at trial.

x. In representing Ms. Shaffer, the respondent neglected a legal matter entrusted to him, in violation of Colo. RPC 1.3.

y. In representing Ms. Shaffer, the respondent failed to comply with his client's reasonable requests for information concerning the matter, in violation of Colo. RPC 1.4(a).

King Matter

a. In approximately 1996, Ike King and his wife Lurena, along with some of their neighbors, Randy and Glenda Benson, Robert and Renee Grigsby, and Tom Rotromel, became involved in a zoning dispute with the Town of Nunn, Colorado.

b. Mr. King and the others had been cited for zoning violations and claimed that the underlying ordinance was unenforceable.

c. Mr. King and the six others retained the respondent to represent them in their dispute with the Town of Nunn and several town officials. They paid the respondent $3,000.00 in advance to represent them in litigation with the town and the town officials.

d. In March 1996, the respondent filed suit in the United States District Court for the District of Colorado on behalf of Randy Benson, Glenda Benson, Robert Grigsby, Renee Grigsby, Ike King, Loretta (sic.) King, Tom Rotromel and on behalf of all others similarly situated, against the Town of Nunn and several town officials, both individually and in their official capacity. The case was docketed as case number 96-B-647.

e. In August 1996, the Town of Nunn filed a complaint in Weld County District Court against Ike and Lurena King seeking injunctive relief. In the pleading docketed as case number 96CV437 the Town of Nunn sought a legal determination of the validity of its zoning ordinances.

f. As part of case number 96CV437, the Town of Nunn also sought and obtained a temporary restraining order prohibiting Mr. King from maintaining any additional structures or trailers on his property.

g. On September 6, 1996, the respondent entered his appearance on behalf of Ike and Lurena King in case number 96CV437.

h. On October 11, 1996, the trial regarding the injunctive relief sought by the town was held in case number 96CV437 before the Honorable William Lee West. The respondent did not present the evidence he had discussed with his clients because he mistakenly believed the case was set for a hearing on preliminary matters and not on the ultimate issue of the enforceability of the zoning ordinances. At the conclusion of the trial, Judge West took the matter under advisement and allowed the parties to file written arguments.

i. In October 1996, Judge West also issued a citation to Mr. King to appear on November 29, 1996, to show cause as to why he should not be held in contempt for violation of the restraining order previously entered in case number 96CV437.

j. On November 27, 1996, Judge West entered his order granting the permanent injunction sought by the Town of Nunn.

k. On November 29, 1996, neither Mr. King nor the respondent appeared pursuant to the order to show cause entered by Judge West. Accordingly, the court held Mr. King in contempt of court and ordered a bench warrant issued for Mr. King's arrest. Mr. King did not appear because the respondent advised him that it was not necessary for him to do so.

l. On December 11, 1996, the respondent filed a motion requesting that the Weld County District Court reconsider its order granting the permanent injunction in favor of the Town of Nunn.

m. On December 16, 1996, the court denied the motion to reconsider filed by the respondent on December 11, 1996.

n. Mr. King told the respondent he wanted to appeal.

o. On February 7, 1997, the respondent filed a motion to withdraw from representation in case number 96CV437.

p. By the date the respondent filed his motion to withdraw from representation in case number 96CV437, the time period for filing a notice of appeal with respect to the permanent injunction in favor of the Town of Nunn had expired.

q. On February 11, 1997, the court entered an order granting the respondent's motion to withdraw from representation in case number 96CV437.

r. After withdrawing from representation in case number 96CV437, the respondent continued to represent Mr. King and all of the other plaintiffs in U.S. District Court case number 96-B-647.

s. In February 1997, the defendants in the federal court litigation, filed a motion to dismiss the federal suit on the basis of *res judicata* and *collateral estoppel* based upon the findings in the state court in case number 96CV437.

t. After the motion to dismiss was filed in the federal suit, the respondent filed a pleading in case number 96CV437 entitled "Notice of Intent to Appeal." The pleading was not filed with the Colorado Court of Appeals and did not otherwise comply with any of the requirements of C.A.R. 3 for perfecting an appeal.

u. On February 27, 1997, the respondent filed, in the federal court action, a response to the motion to dismiss. In his response, the respondent alleged that *res judicata* was not applicable because his client

intended to appeal the judgment entered in case number 96CV437. Furthermore, the respondent falsely alleged that there was no final order in the state court action and that there would be no final order until after a "hearing on all matters on February 12, 1997."

v. In fact, the hearing scheduled for February 12, 1997, pertained to a contempt proceeding and had nothing to do with the final judgment entered in November 1996.

w. On March 19, 1997, the respondent filed with the Colorado Court of Appeals an actual notice of appeal with respect to the orders entered in case number 96CV437.

x. The Colorado Court of Appeals dismissed the appeal filed by the respondent as being untimely.

y. On May 12, 1999, Magistrate Judge Donald E. Abram issued his recommendations in the federal court litigation, recommending that the motion to dismiss be granted.

z. On June 15, 1999, the Honorable Lewis T. Babcock entered his order adopting the Magistrate's recommendations and dismissing all claims in case number 96-B-647.

aa. The respondent continued to represent all of the plaintiffs in U.S. District Court case number 96-B-647 through the date that all of the plaintiffs' claims in case number 96-B-647 were dismissed. Throughout that representation the respondent seldom returned his clients' phone calls and frequently cancelled meetings with them. When the clients expressed their concern about the respondent's dedication to their case, the respondent threatened to sue his clients for defamation.

bb. In representing his clients in regard to the King matter, the respondent neglected legal matters entrusted to him, in violation of Colo. RPC 1.3.

cc. In representing his clients in regard to the King matter, the respondent failed to keep his clients reasonably informed about the status of a matter and to comply with reasonable requests for information, in violation of Colo. RPC 1.4(a).

dd. At least some of the conduct of the respondent directed toward his clients in the King matter, especially his threats directed toward his clients while he was actively representing them, constitutes conduct adversely reflecting on his fitness to practice law, in violation of Colo. RPC 8.4(h).

Langley Matter

a. On May 8, 1996, Carl Langley was arrested and charged with failure to signal (a traffic violation) and disorderly conduct (a municipal code violation) in Eaton, Colorado. The disorderly conduct charges stemmed from Mr. Langley's alleged verbal abuse of Eaton police officers after he was pulled over for a traffic violation.

b. On June 27, 1996, Mr. Langley retained the respondent to represent him in pursuing a civil action against the town of Eaton for violation of his civil rights. Mr. Langley paid the respondent $5,000.00 in advance as a flat fee for representation throughout the civil action and for defending him against the pending municipal charges.

c. On October 28, 1996, Mr. Langley was convicted in the municipal matter following a jury trial. Mr. Langley was ordered to pay fines and court costs totaling $110.00.

d. The respondent filed a motion for new trial or for judgment notwithstanding the verdict in the municipal court. That motion was denied on November 7, 1996. The respondent told Mr. Langley that he would appeal the case further so that a court outside Eaton would review the matter.

e. After the motion for new trial or for judgment notwithstanding the verdict was denied, the respondent did not take any further steps to appeal the conviction in the municipal court.

f. In January 1997, the respondent paid to the Eaton Municipal Court $110.00 in satisfaction of the fine and costs imposed in Mr. Langley's case. Thereafter, the case was closed.

g. The respondent did not tell Mr. Langley the case had been closed. The respondent also failed to return numerous phone calls from Mr. Langley seeking information about the status of his appeal.

h. In June 1997, after learning on his own that the municipal case had been closed, Mr. Langley demanded that the respondent render an accounting of the money paid to him, refund the unearned portion, and return his file.

i. On July 1, 1997, the respondent delivered a letter to Mr. Langley advising that the respondent had earned the entire $5,000.00 in the municipal court case and in conducting research concerning a possible civil rights claim. In his letter, the respondent argued that a

civil rights claim was no longer viable because of the conviction in the municipal court matter. The respondent also provided what purported to be a summary of hours billed at the rate of $120.00 per hour.

j. The summary of hours billed provided to the respondent represents time allegedly spent by the respondent working on both Mr. Langley's case and an unrelated case the respondent was to have handled for Mr. Langley's son, Gregg Langley.

k. The respondent to this point in time has not differentiated between time allegedly spent on Mr. Langley's case and time allegedly spent on Gregg Langley's case.

l. In his letter to Mr. Langley, the respondent claimed that he spent 35 hours conducting unspecified "research." The respondent has not broken the time out between research allegedly conducted with respect to Mr. Langley's case and research allegedly conducted with respect to Gregg Langley's case. The respondent's files do not contain evidence of such research.

m. Mr. Langley claims to never have agreed to be responsible for his son's obligations and never consented to have his funds applied to his son's account. Respondent disagrees with this assertion.

n. The respondent never filed a civil rights action on Mr. Langley's behalf, nor has he refunded to Mr. Langley any of the funds Mr. Langley paid to him.

o. In representing Mr. Langley, the respondent neglected legal matters entrusted to him, in violation of Colo. RPC 1.3.

p. In representing Mr. Langley, the respondent failed to keep his client reasonably informed about the status of a matter and to respond to reasonable requests for information, in violation of Colo. RPC 1.4(a).

Drake Matter

a. In July 1996, Betty Drake and Glen Dickinson retained the respondent to represent them in a dispute with their neighbor Carl Hale. They paid the respondent in advance a fee of $2,500.00 to obtain a restraining order against Mr. Hale and to pursue a suit for damages.

b. In August 1996, the respondent filed a complaint and an ex parte motion for injunctive relief against Mr. Hale. The lawsuit sought damages for harm caused to Ms. Drake's and Mr. Dickinson's property by Mr. Hale and his livestock.

c. Pursuant to the motion filed by the respondent, the court entered an order enjoining Mr. Hale, his family, and agents from entering upon Ms. Drake's property and requiring that Mr. Hale take appropriate measures to prevent his livestock from entering upon Ms. Drake's property.

d. The respondent never filed with the court proof that the injunction order was served on Mr. Hale.

e. Ms. Drake and Mr. Dickinson notified the respondent that Mr. Hale repeatedly violated the order and the respondent failed or refused to initiate contempt proceedings despite their persistent urging.

f. On at least two occasions, the respondent told Ms. Drake and Mr. Dickinson that he had scheduled court proceedings to resolve the continuing problems with Mr. Hale. In February 1997 the clients actually met the respondent at his office because he told them they were going to court that day. After the clients arrived at the respondent's office he told them the hearing had been cancelled. In fact, the respondent had not scheduled any court proceeding.

g. The respondent never filed proof that the original complaint was served upon Mr. Hale.

h. Mr. Hale never filed an answer to the original complaint filed against him in Weld County District Court, case number 96CV388.

i. The respondent never filed a motion seeking an entry of default against Mr. Hale for failure to file an answer to the original complaint in case number 96CV388.

j. In April 1997, the respondent filed an amended complaint on behalf of Ms. Drake and Mr. Dickinson in case number 96CV388.

k. Robert C. Burroughs, Esq., accepted service of the amended complaint on behalf of Mr. Hale and filed an answer to the amended complaint.

l. No further hearings were scheduled or conducted in the case.

m. In April 1997, Ms. Drake asked her business attorney, Kenneth C. Wolfe, Esq., to write a letter to the respondent urging that he direct his attention to the case. On April 8, 1997, Mr. Wolfe sent a letter to the respondent requesting information about the status of the case,

and requesting an accounting of the retainer paid to him by Ms. Drake, and an analysis of how the respondent planned to proceed in the case.

n. The respondent received Mr. Wolfe's letter but did not communicate with Mr. Wolfe in response to Mr. Wolfe's letter.

o. On July 15, 1997, the respondent filed a notice to set in case number 96CV388, stating that he would be setting the case for trial on July 17, 1997.

p. The respondent never did set the case for trial or for any further proceedings. However, he misrepresented to opposing counsel that a September trial date had been set, and misrepresented to Ms. Drake that the case was set for mediation.

q. In July 1997, Ms. Drake filed her request for investigation of the respondent with the Office of Disciplinary Counsel.

r. The notice to set filed in July 1997 was the last pleading filed by the respondent in case number 96CV388.

s. On September 14, 1997, Ms. Drake sent a letter to the Honorable William West, the presiding judge in her case, advising the judge of problems she and Mr. Dickinson were having with the respondent. Judge West sent a letter to Ms. Drake in response stating that he could not give her any advice other than to retain a new attorney as soon as possible.

t. In September 1997, Ms. Drake and Mr. Dickinson sent two letters to the respondent in which they clearly notified the respondent that his representation was terminated. In the letters, they demanded an accounting and a refund of the balance of the money they had paid to the respondent. They also demanded a list of all documents they had provided to the respondent, and the return of all materials they had provided to the respondent as evidence, including videotapes.

u. The respondent never filed a motion to withdraw from representation in case number 96CV388, despite knowing that the clients had terminated his representation.

v. On February 3, 1999, the court issued a notice of dismissal for failure to prosecute in case number 96CV388, indicating that the case would be dismissed without prejudice on March 5, 1999, unless cause was shown why the case should not be dismissed. The notice was provided to the respondent, as he was still counsel of record for Ms. Drake and Mr. Dickinson.

w. The respondent did not advise his clients of the notice nor did he take any steps to prevent their case from being dismissed. Accordingly, on March 16, 1999, the court entered an order dismissing case number 96CV388 for lack of prosecution.

x. The respondent has not refunded to Ms. Drake and Mr. Dickinson any portion of the funds they paid to the respondent for representation in case number 96CV388.

y. Ms. Drake and Mr. Dickinson have never received from the respondent an accounting with respect to the funds paid to the respondent. The respondent also failed or refused to return the documents and videotapes Ms. Drake and Mr. Dickinson provided as evidence and which they needed to prosecute their claims.

z. In representing Ms. Drake and Mr. Dickinson, the respondent neglected legal matters entrusted to him, in violation of Colo. RPC 1.3.

aa. In representing Ms. Drake and Mr. Dickinson, the respondent failed to keep clients reasonably informed about the status of a matter and failed to comply with reasonable requests for information, in violation of Colo. RPC 1.4(a).

bb. The fee charged by the respondent for his representation of Ms. Drake and Mr. Dickinson was unreasonable within the meaning of Colo. RPC 1.5(a).

cc. The respondent failed to deliver to Ms. Drake and Mr. Dickinson funds and other property that they were entitled to receive and failed, upon request, to render a full accounting regarding such property, in violation of Colo. RPC 1.15(b).

dd. The respondent failed to withdraw from representation in Ms. Drake and Mr. Dickinson's case when his representation was terminated, in violation of Colo. RPC 1.16(a)(3).

ee. The respondent failed, upon termination of his representation by Ms. Drake and Mr. Dickinson, to take steps to the extent reasonably practicable to protect their interests, including failing to surrender papers and property to which his clients were entitled and failing to refund the advance payment of fee that had not been earned, in violation of Colo. RPC 1.16(d).

ff. Through his continued failure to refund the unearned fee paid to him in advance for representation of Ms. Drake and Mr.

Dickinson, the respondent has converted their funds to his own use, which constitutes conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Colo. RPC 8.4(c).

gg. During the course of representing Ms. Drake and Mr. Dickinson, the respondent also made misrepresentations to them, in violation of Colo. RPC 8.4(c).

Griess Matter

a. On April 2, 1996, Eugene J. Griess pled guilty to menacing with a deadly weapon in *People v. Griess*, Larimer County District Court, Case Number 95CV1307. On May 30, 1996, Mr. Griess was sentenced to serve 20 months in the Department of Corrections in connection with that conviction.

b. On July 29, 1997, Mr. Griess was paroled. However, his parole was revoked in October 1997, and he was returned to the Department of Corrections.

c. On or about October 20, 1997, Ruth Griess, Mr. Griess' mother, contacted the respondent at the request of Mr. Griess.

d. The respondent agreed to represent Mr. Griess in seeking post-conviction relief for a flat fee of $3,500.00.

e. On or about October 20, 1997, Ms. Griess sent the respondent checks from two separate accounts totaling $3,500.00.

f. The respondent negotiated both checks and deposited them into his general operating account.

g. Mr. Griess and the respondent discussed potential grounds for post-conviction relief. The respondent also reviewed the court file in Larimer County District Court, Case No. 95CR1307 and determined that Mr. Griess may have a sustainable motion for ineffective assistance of counsel whereby he was not fully informed about his case before the plea and subsequent conviction.

h. The respondent never filed any pleadings in Mr. Griess' case, nor has he entered an appearance in the case since he was retained in October 1997.

i. The respondent never scheduled a hearing or any other proceeding in Mr. Griess' case. However, the respondent misrepresented

to Mr. Griess and to Ruth Griess that he had scheduled a court date in the case for November 28, 1997.

j. In early December 1997, the respondent told Mr. Griess and Ms. Griess that the previously scheduled court date had been changed. In fact, the respondent knew that he had not scheduled any court dates in the case.

k. Neither Mr. Griess nor Ms. Griess received any communication from the respondent after December of 1997, despite the fact that they both sent several letters requesting information about the case and left numerous telephone messages for the respondent.

l. In March 1998, Mr. Griess and Ms. Griess demanded an accounting from the respondent and a refund of the unearned retainer paid to the respondent.

m. The respondent has never discussed Mr. Griess' case with representatives from the Larimer County District Attorney's office.

n. The respondent never provided an accounting to Mr. Griess or Ms. Griess with respect to the funds paid to him for representation of Mr. Griess. However, in 2000 Mr. Griess obtained a judgment against the respondent in small claims court for the amount of the fee paid to the respondent, and the judgment was satisfied from the bond the respondent posted in connection with an unsuccessful appeal.

o. In representing Mr. Griess, the respondent neglected a legal matter entrusted to him, in violation of Colo. RPC 1.3.

p. In representing Mr. Griess, the respondent failed to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information, in violation of Colo. RPC 1.4(a).

q. The respondent failed to deliver to Mr. Griess or to Ruth Griess the funds that they were entitled to receive and failed, upon request, to render a full accounting regarding such funds, in violation of Colo. RPC 1.15(b).

r. The respondent failed, upon termination of his representation in the Griess matter, to take steps to the extent reasonably practicable to protect his clients interests, including failing to refund the advance payment of fee paid to him by or on behalf of Mr. Griess which had not been earned, in violation of Colo. RPC 1.16(d).

s. The respondent's continued retention of funds belonging to Mr. Griess constituted conversion of the funds, in violation of Colo. RPC 8.4(c).

t. The respondent also made misrepresentation to Mr. Griess and to Ruth Griess during the course of his representation of Mr. Griess, in violation of Colo. RPC 8.4(c).

Chalat/Hernandez Matter

a. In June 1996, Emma Hernandez was injured after she slipped and fell at an Albertson's grocery store in Longmont, Colorado.

b. On or about June 28, 1996, Ms. Hernandez met with the respondent who agreed to represent her in seeking damages from Albertson's.

c. At the respondent's request, Ms. Hernandez paid the respondent $90.00 for the filing fee. The respondent never had a written fee agreement with Ms. Hernandez, but indicated that he would handle the case on a contingent fee basis.

d. After he had been retained, the respondent represented to Ms. Hernandez that he had been in contact with Albertson's representatives and that Albertson's was not going to offer anything in settlement. The respondent then advised that he would be filing suit on behalf of Ms. Hernandez.

e. Ms. Hernandez provided respondent with copies of all of her relevant medical bills.

f. Between July 1996 and March 1997, Ms. Hernandez telephoned the respondent's office frequently regarding the status of her case. The respondent did not return any of her calls during that period of time.

g. On April 10, 1997, the respondent filed a complaint on behalf of Ms. Hernandez and sent a copy of the complaint to Ms. Hernandez.

h. After the case was at issue, the respondent sent to Ms. Hernandez interrogatories that had been served by counsel for Albertson's.

i. Ms. Hernandez provided answers to the interrogatories and signed a response to the interrogatories prepared by the respondent.

j. Other than the complaint and the interrogatories, the respondent did not provide to Ms. Hernandez copies of any of the pleadings in her case.

k. From November 1997 through March 19, 1998, Ms. Hernandez called the respondent's office frequently and urged the respondent to schedule a trial date. On March 19, 1997, Ms. Hernandez insisted that the respondent schedule a trial date. The respondent never did set the matter for trial.

l. Albertson's counsel filed a motion to dismiss Ms. Hernandez' complaint on March 17, 1998.

m. On approximately March 20, 1998, Ms. Hernandez picked up her entire file from the respondent so that she could try to find a new lawyer. She was not aware that a motion to dismiss had been filed at that time.

n. The motion to dismiss filed by opposing counsel alleged that the respondent had failed to cooperate in the preparation of a case management order and had failed to provide disclosures required pursuant to C.R.C.P. 26. The motion further alleged that the respondent had appeared personally for a status conference in October 1997, at which time counsel for Albertson's had raised these non-compliance issues with the court. As a result of that status conference, the court had entered an order directing that the respondent submit Rule 26 disclosures on or before October 29, 1997, and that the case management order be filed on or before November 10, 1997.

o. On March 26, 1998, Ms. Hernandez went back to the respondent because she was unable to find new counsel. As of that time, the respondent was still Ms. Hernandez' counsel of record.

p. The respondent never provided disclosures to opposing counsel in Ms. Hernandez' case pursuant to C.R.C.P. 26 and the court's order.

q. The respondent did not assist in the preparation of a case management order in Ms. Hernandez' case.

r. In response to the motion to dismiss filed by opposing counsel, the respondent filed a pleading in which he represented to the court that Ms. Hernandez had instructed him to do nothing further on the case and that she was attempting to locate alternate counsel.

s. In the response, respondent requested that the court deny the motion to dismiss, or delay ruling on the motion until Ms. Hernandez was able to obtain new counsel. The respondent failed to address any of the substantive issues contained in the motion.

t. On April 15, 1998, the court entered an order dismissing the case. The dismissal was a direct result of the respondent's neglect.

u. After the case was dismissed, Ms. Hernandez retained James Chalat, Esq., to represent her in the matter.

v. On or about April 23, 1998, Mr. Chalat filed a motion to vacate the order of dismissal. On May 27, 1998, the Honorable William L. West, the presiding judge in the case, entered an order granting the motion filed by Mr. Chalat and reinstating the case. In his order, Judge West found as follows:

> There is no doubt in my mind that the violations in this case were the result of the gross negligence of the Plaintiff's former counsel. While Plaintiff had knowledge of the deadlines imposed by the Court and that her counsel intended to withdraw, she took reasonable steps to comply. She supplied information to her attorney, and made inquiries about the status of her case. Her former counsel led her to believe that everything was being taken care of. She should be able to rely on what her attorney tells her and should not be penalized.

w. Judge West also found that Albertson's had been prejudiced by the delays caused by the respondent's failure to comply with orders concerning disclosure and discovery. The judge left open the issue of what further order might be necessary to alleviate that prejudice.

x. Ms. Hernandez' case was ultimately resolved through settlement. Settlement negotiations were impacted, however, by the respondent's delay in prosecuting the case and concerns over orders the court might enter to eliminate prejudice caused to the defendant by that delay.

y. Ms. Hernandez also filed a civil action against the respondent arising out of his conduct in representing her in her lawsuit against Albertson's. Mr. Chalat represented her in filing that complaint.

z. The respondent filed his answer to the complaint on or about March 15, 1999, and also filed a counter-claim against Ms. Hernandez and a third-party claim against Mr. Chalat.

aa. On July 19, 1999, the Weld County District Court entered an order dismissing the respondent's counter-claim and third-party complaint, and assessed attorney fees against the respondent pursuant to C.R.S. Section 13-17-201 (groundless and frivolous claims). Subsequently, a judgment was entered in favor of Ms. Hernandez and against the respondent.

bb. In representing Emma Hernandez, the respondent neglected a legal matter entrusted to him, in violation of Colo. RPC. 1.3.

cc. In representing Emma Hernandez, the respondent failed to keep his client reasonably informed about the status of a matter and to comply with reasonable requests for information, in violation of Colo. RPC 1.4(a).

dd. The respondent failed, upon terminating his representation of Ms. Hernandez, to take steps to the extent reasonably practicable to protect her interests, in violation of Colo. RPC 1.16(d).

ee. The respondent's conduct in regard to this matter was prejudicial to the administration of justice, in violation of Colo. RPC 8.4(d).

Lahr Matter

a. The respondent represented Jacob Lahr in U.S. District Court, Case No. 95-B-2888, a civil action brought by Mr. Lahr alleging violation of his rights while in custody of the Weld County Sheriff's Department.

b. The respondent entered his appearance in the case after Mr. Lahr had already filed a pro se complaint.

c. On or about October 31, 1997, the parties in Mr. Lahr's case reached a final settlement of all claims whereby Mr. Lahr was to be paid $100.00 and all claims were to be dismissed with prejudice.

d. In furtherance of the settlement, defense counsel sent the respondent a stipulation to dismiss, proposed order, and general release. Defense counsel requested that the stipulation and release be executed, and that the respondent return the stipulation and release to defense counsel.

e. On or about November 13, 1997, the Colorado Counties Casualties and Property Pool issued a check payable to Mr. Lahr and the respondent jointly in the amount of $100.00 pursuant to the settlement agreement.

f. The above-referenced check was received by the respondent and stated on its face that it was not valid six months after the check date of November 13, 1997. The respondent did not advise Mr. Lahr that he had received the check.

g. In January 1998, the respondent, without notice to Mr. Lahr, signed a stipulation to dismiss Mr. Lahr's case with prejudice.

h. As of the date the respondent signed the stipulation to dismiss Mr. Lahr's case, the respondent had not provided to Mr. Lahr any of the settlement documents and the respondent had not obtained Mr. Lahr's signature on the stipulation, the release, or any other settlement documents.

i. The check in the amount of $100.00 received by the respondent constituted settlement proceeds in which Mr. Lahr had an interest.

j. The respondent failed to deliver to Mr. Lahr any portion of the settlement proceeds.

k. The respondent never provided to Mr. Lahr the settlement documents relating to his case. After disciplinary proceedings had already been commenced, Mr. Lahr was able to obtain a substitute check and settlement documents from opposing counsel directly. The respondent did not assist him in this regard.

l. In representing Mr. Lahr, the respondent neglected a legal matter entrusted to him, in violation of Colo. RPC 1.3.

m. In representing Mr. Lahr, the respondent failed to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information, in violation of Colo. RPC 1.4(a).

n. The respondent had an obligation to deliver to Mr. Lahr the settlement proceeds received by the respondent concerning Mr. Lahr's case. The respondent failed to deliver to Mr. Lahr the funds the respondent received for settlement of Mr. Lahr's case, in violation of Colo. RPC 1.15(b).

Segura Matter

a. In 1996, Irma Segura retained the respondent to represent her in a matter pending before the United States Immigration and Naturalization Service ("INS").

b. Ms. Segura was born in Mexico and entered the United States in 1970 at the age of two. She married a U.S. citizen in 1986, and was granted conditional permanent resident status in 1988.

c. In 1996, the INS reopened the matter to consider Ms. Segura's residency status.

d. A hearing was scheduled in Ms. Segura's case for January 8, 1997. In December 1996, the respondent had his secretary send a letter to Ms. Segura advising her of the hearing date and advising that she need not be present for the hearing.

e. On January 8, 1997, the respondent appeared for the hearing without Ms. Segura and requested a continuance.

f. On or about January 9, 1997, the respondent sent a letter to Ms. Segura alleging that she had "missed" the scheduled hearing and that the respondent would have to resubmit her petition with a new filing fee. In fact, the hearing had to be rescheduled because the respondent was not prepared.

g. In approximately February 1997, the respondent filed a new petition for Ms. Segura and a hearing was scheduled for May 14, 1997.

h. On May 14, 1997, the respondent requested another continuance in Ms. Segura's case because he was not prepared or did not understand the nature of the proceedings that had been scheduled. The matter was reset for hearing on September 3, 1997.

i. The September 3, 1997 hearing was rescheduled for October 14, 1997.

j. The respondent appeared on October 14, 1997, with Ms. Segura.

k. On October 14, 1997, the respondent asked that the matter be continued again because Ms. Segura's husband was not present. However, Ms. Segura's husband's presence was not necessary to proceed.

l. At the respondent's request, the matter was continued to January 20, 1998.

m. The respondent did not send written notice to Ms. Segura concerning the new hearing date, and did not return telephone calls from Ms. Segura in which she sought confirmation of the correct hearing date.

n. On January 20, 1998, the respondent appeared for the scheduled hearing without Ms. Segura. Because Ms. Segura was not present for the proceedings, an absentia deportation order was entered.

o. The respondent did not take any action to have the deportation order set aside, and Ms. Segura had to retain new counsel to avoid deportation.

p. In representing Ms. Segura, the respondent failed to provide competent representation, in violation of Colo. RPC 1.1.

q. In representing Ms. Segura, the respondent neglected a legal matter entrusted to him, in violation of Colo. RPC 1.3.

r. In representing Ms. Segura, the respondent failed to keep his client reasonably informed about the status of a matter and to comply with reasonable requests for information, in violation of Colo. RPC 1.4(a).

s. In representing Ms. Segura, the respondent engaged in conduct prejudicial to the administration of justice, in violation of Colo. RPC 8.4(d).

Burkhart Matter

a. In approximately October 1998, Karen Burkhart paid the respondent $750.00 in advance for representation in a dispute with the owner of a mobile home park.

b. Ms. Burkhart had purchased a mobile home in the park with the intention of using it as a rental property. After she purchased the mobile home, she was told she could not use it as a rental unit. Thus, she entered into a contract to sell the mobile home.

c. Ms. Burkhart retained the respondent to represent her when the owners of the park tried to block the sale.

d. Shortly after Ms. Burkhart retained the respondent in regard to this matter, the mobile home park was sold and the new owners

withdrew any objection to Ms. Burkhart's renting or selling the mobile home she had purchased.

e. The respondent did not perform any substantial services on Ms. Burkhart's behalf in regard to her dispute with the owners of the mobile home park prior to the change in ownership.

f. Ms. Burkhart notified the respondent promptly when she learned that the mobile home park had been sold and that the new owners did not object to her selling or renting the mobile home she had purchased.

g. Ms. Burkhart notified the respondent that his services were no longer needed in regard to the dispute concerning the mobile home in late 1998, thereby terminating the respondent's representation in that matter.

h. In approximately November 1998, Ms. Burkhart was served with a summons to appear in small claims court in Weld County Court in an action filed by Cody and Janell Wooldridge.

i. In their complaint, the Wooldridges alleged that Ms. Burkhart had killed or converted pigs belonging to the Wooldridges when the pigs came onto Ms. Burkhart's property.

j. On or about November 10, 1998, Ms. Burkhart paid the respondent an additional $750.00 to represent her in defending the lawsuit filed by the Wooldridges.

k. In connection with representation in the Wooldridge matter, Ms. Burkhart provided the respondent with photographs she had taken which supported her defense.

l. The respondent represented to Ms. Burkhart that he would file the necessary papers to have the Wooldridge case removed from small claims court to county court so that he could represent Ms. Burkhart.

m. Based upon the respondent's representations, Ms. Burkhart understood that the December 17, 1998 trial date in the Wooldridge matter would be rescheduled.

n. On December 17, 1998, the respondent left a telephone message for Ms. Burkhart informing her that she had to appear in court for her case at 1:30 p.m. on that same day.

o. When Ms. Burkhart arrived at the Weld County Courthouse, the respondent was present and told Ms. Burkhart he had not removed the case to county court and that she would have to go into court and try the case herself.

p. Ms. Burkhart was not prepared for a trial, did not have any witnesses or exhibits, and received no assistance from the respondent in preparing for or conducting the trial.

q. At the conclusion of the trial, a judgment was entered against Ms. Burkhart in the amount of $991.75, plus costs.

r. At the time the respondent received the funds from Ms. Burkhart for representation in the dispute with the owners of the mobile home park, the respondent had not performed any services for Ms. Burkhart and had not earned the funds paid to him.

s. The respondent did not perform the services for which Ms. Burkhart paid him in advance in regard to the mobile home park matter.

t. At the time Ms. Burkhart paid the respondent another $750.00 to represent her in the Wooldridge matter, the respondent had not performed any services to earn the additional funds.

u. The respondent did not perform the services for which he was paid in advance for representation in the Wooldridge matter.

v. Ms. Burkhart has requested that the respondent refund to her the money she paid the respondent for representation in both matters.

w. Ms. Burkhart has also requested that the respondent provide her with an accounting with respect to the funds she paid to him in advance for representation in the matters described above.

x. The respondent has failed to provide an accounting to Ms. Burkhart as requested, and has failed to refund any of the money paid to him in advance for representation of Ms. Burkhart.

y. Ms. Burkhart terminated the respondent's representation of Ms. Burkhart in the mobile home park matter in late 1998.

z. The respondent through his own failure to take steps to remove the case to county court, and his actions which required Ms. Burkhart to represent herself at the trial in the Wooldridge matter

effectively terminated the respondent's representation in the Wooldridge matter.

aa. By the beginning of 1999, the respondent's representation in both matters had been terminated.

bb. Since his representation terminated, the respondent has failed or refused to refund any of the money paid to him in advance for representing Ms. Burkhart in the matters referred to above.

cc. The respondent also failed or refused to return the photographs provided to him by Ms. Burkhart in connection with the Wooldridge matter and did not make the photographs available to Ms. Burkhart on the day of the trial in the Wooldridge matter.

dd. Through his continued exercise of ownership, dominion or control over the funds paid to him by Ms. Burkhart for representation, the respondent has converted funds belonging to Ms. Burkhart.

ee. In representing Ms. Burkhart, the respondent neglected legal matters entrusted to him, in violation of Colo. RPC 1.3.

ff. In representing Ms. Burkhart, the respondent failed to deliver to Ms. Burkhart funds and other property in his possession to which she was entitled, in violation of Colo. RPC 1.15(b).

gg. The respondent failed, upon termination of his representation, to take steps to the extent reasonably practicable to protect Ms. Burkhart's interests, such as by surrendering papers and property to which she was entitled and refunding the advance payment of fee that had not been earned, in violation of Colo. RPC 1.16(d).

hh. Through his conversion of funds belonging to Ms. Burkhart, the respondent has engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Colo. RPC 8.4(c).

Jacobson Matter

a. On or about June 25, 1997, Pam and Wallace Jacobson retained the respondent to represent them as plaintiffs in a civil suit concerning the alleged wrongful dismissal of their son from Mountain View Academy, a private school, in February 1997.

b. The respondent agreed to represent the Jacobsons for a fee of $2,500.00, paid in advance.

c. On June 25, 1997, the Jacobsons paid the respondent $2,500.00

d. In July 1997, the respondent represented to the Jacobsons that he would prepare and file a complaint against Kelly T. Whitney, their son's former teacher at the school, and that he would have the complaint served on Ms. Whitney right away.

e. On or about July 9, 1997, the Jacobsons met with the respondent at the respondent's office to review a complaint he had prepared to be filed in Weld County District Court. The respondent had the Jacobsons sign a verification of the allegations in the complaint and had their signatures notarized.

f. After July of 1997, the Jacobsons experienced difficulty communicating with the respondent about the status of the case.

g. The respondent frequently cancelled meetings with the Jacobsons that had been scheduled in advance, and the respondent did not return any of the Jacobsons' telephone calls in a timely manner.

h. Through the end of 1997, the Jacobsons were unable to obtain any definitive information from the respondent about the status of their case or whether he had been able to serve the complaint.

i. In January 1998, the Jacobsons met with the respondent at his office and he represented to them that the complaint had been served on the defendant shortly after Christmas.

j. After January 1998, the respondent continued to cancel meetings with the Jacobsons and failed to return their telephone calls.

k. In August 1998, the Jacobsons moved from Greeley, Colorado to Durango, Colorado. At the time of their move, they provided the respondent with their new address, telephone numbers, and their e-mail address.

l. In October and November of 1998, the Jacobsons called the respondent's office several times and faxed a letter to the respondent in an attempt to schedule a meeting with him during the Thanksgiving holiday. They had plans to be in Greeley for a few days at that time.

m. The respondent did not respond to any of their communications. Thus, the Jacobsons were unable to schedule a meeting with the respondent while they were in Greeley in November of 1998.

n. While the Jacobsons were in Greeley in November 1998, they went to the Weld County Courthouse to check on the status of their case. The Jacobsons learned after checking the court's records and speaking with a court clerk that their suit had never been filed.

o. On or about December 7, 1998, Pam Jacobson spoke with the respondent by telephone and confronted him with the information she had learned from the Clerk of the Weld County Combined Courts.

p. When confronted the respondent admitted to Ms. Jacobson that the lawsuit had not been filed. However, the respondent alleged that he was discussing settlement with counsel for the defendant and for the school, and identified the two attorneys with whom he had been involved in settlement negotiations.

q. In fact, the respondent had not been involved in any discussions with one of the attorneys and the attorney for the school district had not made any settlement offers.

r. As of January 1999, the respondent had still not filed suit on the Jacobsons' behalf.

s. On or about January 11, 1999, the Jacobsons sent a letter to the respondent instructing him to file the necessary papers and to set a court date in their case.

t. The respondent neither scheduled any court dates nor filed the complaint as instructed.

u. Throughout January and February of 1999 the respondent failed to respond to the Jacobsons' January letter and failed to return their telephone calls.

v. In February 1999, the Jacobsons contacted the Weld County Bar Association and asked for help in getting the respondent to communicate with them and to perform the services for which he had been paid.

w. Based upon their request, George H. Ottenhoff, the Chairman of the Weld County Bar Association Conciliation Committee, sent a letter to the respondent urging his attention to the Jacobsons' matter.

x. The respondent failed to take any action as urged by Mr. Ottenhoff in his letter.

y. On April 2, 1999, the Jacobsons filed a request for investigation with the Colorado Supreme Court, Office of Attorney Regulation.

z. On June 29, 1999, after the respondent submitted a response to the request for investigation, the Jacobsons sent a letter to the respondent terminating his representation and demanding an accounting and a refund of the retainer they had paid to him.

aa. The respondent has failed to provide to the Jacobsons an accounting with respect to the funds they paid to him in 1997 and has failed to refund any of the funds as requested by the Jacobsons.

bb. The respondent never filed a lawsuit on behalf of the Jacobsons and he did not perform any substantial legal services that would entitle him to retain the funds paid to him by the Jacobsons in 1997.

cc. In representing the Jacobsons, the respondent has neglected a legal matter entrusted to him, in violation of Colo. RPC 1.3.

dd. In representing the Jacobsons, the respondent has failed to keep his clients reasonably informed about the status of a matter and to comply with reasonable requests for information, in violation of Colo. RPC 1.4(a).

ee. The respondent has failed to promptly deliver to the Jacobsons funds or property that they are entitled to receive and has failed, upon request by the Jacobsons, to render a full accounting regarding their funds, in violation of Colo. RPC 1.15(b).

ff. The respondent has failed, upon termination of his representation by the Jacobsons, to take steps to the extent reasonably practicable to protect their interests by surrendering property to which the Jacobsons are entitled and failing to refund the advance payment of fee that has not been earned in violation of Colo. RPC 1.16(d).

gg. During his representation of the Jacobsons, the respondent made misrepresentations to the Jacobsons in violation of Colo. RPC 8.4(c).

hh. Through his continued exercise of dominion and control over funds belonging to the Jacobsons, the respondent has converted the Jacobsons' funds. His conversion of client funds is conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Colo. RPC 8.4(c).

Lamb Matter

a. On or about April 14, 1997, Edward and Susan Lamb paid the respondent $2,500.00 as a retainer to represent them in pursuing claims against Weld County. The Lambs alleged that the county made road improvements that exceeded the right of way granted by the previous owners of the real property they owned.

b. The respondent told the Lambs that the proper procedure would be to file a quiet title action.

c. The respondent told the Lambs that the $2,500.00 paid to him in advance would cover everything for his representation in a lawsuit to quiet title.

d. After the Lambs retained the respondent, they made numerous long distance telephone calls to the respondent attempting to obtain information about their case. The respondent generally did not return their telephone calls.

e. On or about December 8, 1997, Ms. Lamb sent a letter to the respondent requesting an update concerning the case. The respondent never replied to the letter.

f. Several weeks after sending the letter to the respondent, Ms. Lamb was able to contact the respondent by telephone at his office. At that time, the respondent represented to Ms. Lamb that the county had agreed to settle the case and that the county would be sending a check to the respondent shortly.

g. For the next several months, the respondent continued to assure Ms. Lamb, when she was able to reach him at the office, that the county would be sending a check. In fact, the respondent never contacted representatives of Weld County on the Lambs' behalf and the county never made any settlement offers.

h. In early April 1999, Ms. Lamb contacted the respondent by telephone and told him the Lambs wished to take the matter to court.

i. In late April 1999, the Lambs received from the respondent a copy of the complaint to quiet title that he had prepared. The respondent represented to the Lambs that the complaint had been filed and that he would take their case to court.

j. At one point, the respondent specifically told Ms. Lamb that the case was going before a judge on May 8, 1999, at 8:30 a.m.

k. In June and July of 1999, Ms. Lamb called the respondent at his office concerning the status of the case. During her telephone conversation with the respondent, the respondent represented to her that he was still waiting to hear from the court about the case.

l. On or about July 8, 1999, Ms. Lamb went to the Weld County Courthouse herself and learned that the respondent had never filed a lawsuit on their behalf.

m. On July 8, 1999, Ms. Lamb sent a letter to the respondent confronting him with his failure to file the action on their behalf. In the letter, Ms. Lamb terminated the respondent's representation and demanded that he refund the money they had paid to him.

n. Since demanding a refund of their money from the respondent, the Lambs have heard nothing from the respondent.

o. The respondent has failed to refund or account for his use of any of the money paid to him by the Lambs.

p. The respondent has also failed to perform the services for which the Lambs paid him in advance.

q. All of the respondent's representations concerning settlement negotiations with Weld County were false.

s. In representing the Lambs, the respondent has neglected a legal matter entrusted to him, in violation of Colo. RPC 1.3.

t. In representing the Lambs, the respondent has failed to keep his clients reasonably informed about the status of a matter and to comply with reasonable requests for information, in violation of Colo. RPC 1.4(a).

u. The respondent has failed to promptly deliver to the Lambs funds or property that they are entitled to receive and has failed, upon request by the Lambs, to render a full accounting regarding their funds, in violation of Colo. RPC 1.15(b).

v. The respondent has failed, upon termination of his representation by the Lambs, to take steps to the extent reasonably practicable to protect their interests by surrendering property to which

the Lambs are entitled and failing to refund the advance payment of fee that has not been earned in violation of Colo. RPC 1.16(d).

w. During his representation of the Lambs, the respondent made misrepresentations to the Lambs in violation of Colo. RPC 8.4(c).

x. Through his continued exercise of dominion and control over funds belonging to the Lambs, the respondent has converted the Lambs' funds. His conversion of client funds is conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Colo. RPC 8.4(c).

Trenado Matter

a. In approximately October 1998, Joel Trenado met with the respondent to discuss Mr. Trenado's immigrant status. Mr. Trenado has been living in the United States since the age of 12 but does not have legal status in this country.

b. The respondent told Mr. Trenado that he could take care of getting Mr. Trenado legal status in the United States by filing the appropriate petition with the United States Immigration and Naturalization Service ("INS").

c. Mr. Trenado paid the respondent $2,000.00 in advance for the respondent's fee to represent him before the INS.

d. Mr. Trenado later paid the respondent an additional $250.00 which the respondent represented would be required for the INS filing fees.

e. Throughout the time the respondent was to have been representing him, Mr. Trenado was generally not able to reach the respondent by telephone and the respondent did not return his telephone calls.

f. Mr. Trenado did not receive any correspondence from the respondent during the representation, nor did he receive any other information indicating that the respondent was taking steps to move his case forward.

g. By June of 1999, Mr. Trenado was frustrated with the lack of any progress on his case. On or about June 16, 1999, Mr. Trenado contacted the respondent by telephone and informed the respondent that his representation was terminated and that he wanted a refund of his money.

h. On or about June 20, 1999, Mr. Trenado sent a letter to the respondent demanding a refund of his money.

i. The respondent failed to respond to Mr. Trenado's letter and did not remit a refund.

j. Later in June 1999, Mr. Trenado contacted another attorney, Ron Vaughan, Esq., to help him with his immigration matter and to help him deal with the respondent. On June 30, 1999, Mr. Vaughan sent a letter to the respondent on Mr. Trenado's behalf, demanding a refund of the money Mr. Trenado had paid the respondent and an accounting.

k. The respondent has failed to provide an accounting or a refund to Mr. Trenado in response to his requests or in response to the letter from Mr. Vaughan.

l. The respondent never filed anything on Mr. Trenado's behalf with the INS, nor did he provide any services for which Mr. Trenado paid him in advance.

m. The respondent did not deposit any of the funds paid to him by Mr. Trenado into a trust account, including the funds Mr. Trenado paid for the filing fee.

m. In representing Mr. Trenado, the respondent has neglected a legal matter entrusted to him, in violation of Colo. RPC 1.3.

n. In representing Mr. Trenado, the respondent failed to keep his client reasonably informed about the status of a matter and to comply with reasonable requests for information, in violation of Colo. RPC 1.4(a).

o. The respondent failed to promptly deliver to Mr. Trenado funds or property that he is entitled to receive and has failed, upon request by Mr. Trenado, to render a full accounting regarding his funds, in violation of Colo. RPC 1.15(b).

p. The respondent failed, upon termination of his representation by Mr. Trenado, to take steps to the extent reasonably practicable to protect his interests by surrendering property to which Mr. Trenado is entitled and failing to refund the advance payment of fee that has not been earned in violation of Colo. RPC 1.16(d).

q. During his representation of Mr. Trenado, the respondent made misrepresentations to Mr. Trenado in violation of Colo. RPC 8.4(c).

r. Through his continued exercise of dominion and control over funds belonging to Mr. Trenado, the respondent has converted Mr. Trenado's funds. His conversion of client funds is conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Colo. RPC 8.4(c).

Allmer Matter

a. On September 13, 1996, Mr. Allmer paid the respondent $3,000.00 as an advance fee to file a discrimination claim on behalf of Mr. Allmer and his son against the Town of Gilcrest, Colorado.

b. Mr. Allmer believed that the Gilcrest police had violated his civil rights and those of his son.

c. At the time Mr. Allmer retained the respondent, the respondent told him that he had a good case and that the city would probably settle the matter. The respondent also estimated that they would get approximately $100,000.00 in settlement or damages. The respondent told Mr. Allmer that it would likely take approximately three years to get a court date in the case.

d. Later in 1996, when Mr. Allmer asked the respondent about the status of his case, the respondent told Mr. Allmer that he had filed the suit in federal court and that he was involved in negotiations with counsel for the Town of Gilcrest.

e. For the next two years, the respondent continued to assure Mr. Allmer that the case had been filed and that negotiations were underway. During the same period of time, Mr. Allmer requested, on several occasions, a copy of the pleadings the respondent had supposedly filed in federal court. The respondent never provided copies of any pleadings to Mr. Allmer.

f. Mr. Allmer also requested that the respondent provide him with a case number so that he could obtain information about his case from the court directly. The respondent promised to provide the case number on more than one occasion but never did.

g. The respondent never filed suit on Mr. Allmer's behalf or on behalf of Mr. Allmer's son in any court. Furthermore, the respondent never contacted representatives of the City of Gilcrest concerning Mr. Allmer, his son, or their claims.

h. On October 13, 1999, as a result of his mental state and a

serious automobile accident, the respondent was placed on disability inactive status and has remained on disability inactive status continually since that date.

i. The respondent was obligated to notify all of his clients, including Mr. Allmer, of his transfer to disability inactive status and his inability to continue representing them.

j. The respondent failed to provide such notice to Mr. Allmer. Respondent has never filed an affidavit with the Colorado Supreme Court, pursuant to C.R.C.P. 251.28(d), verifying that he has given notice of his disability status to all clients and all opposing parties in litigation matters.

k. Mr. Allmer attempted, throughout the early months of 2000, to contact the respondent concerning the case and to demand a refund of his money. The respondent has not been available at his office and Mr. Allmer has been unable to reach him by telephone.

l. Notice concerning this matter has been provided to the respondent through counsel, Daniel J. Schendzielos, Esq. However, the respondent has failed to provide any further information to Mr. Allmer and has failed to refund to Mr. Allmer the unearned fee paid to the respondent in 1996.

m. The respondent neglected the legal matter entrusted to him by Mr. Allmer, in violation of Colo. RPC 1.3.

n. The respondent failed to keep Mr. Allmer reasonably informed about the status of a matter and promptly comply with reasonable requests for information, in violation of Colo. RPC 1.4(a).

o. The respondent failed, upon termination of his representation in the Allmer matter, to take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, and refunding any advance payment of fee that has not been earned, in violation of Colo. RPC 1.16(d).

p. The respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, by making misrepresentations to Mr. Allmer about the status of his case and about alleged negotiations with the Town of Gilcrest, in violation of Colo. RPC 8.4(c).

q. The respondent converted to his own use Mr. Allmer's funds by failing to perform any services for which the funds were paid, and

then failing, within a reasonable period of time after his representation was terminated, to refund the unearned retainer, in violation of Colo. RPC 8.4(c).

r. The respondent failed to comply with his obligation to give notice of his transfer to disability inactive status to Mr. Allmer, pursuant to the requirements of C.R.C.P. 251.28; and failed to file the affidavit required by C.R.C.P. 251.28(d) following his transfer to disability inactive status.

s. Through his neglect and failure to communicate, the respondent abandoned Mr. Allmer as a client.

Sandra Shaffer Matter

a. In late 1997, the respondent agreed to represent Ms. Shaffer in regard to her employment discrimination claim against her former employer.

b. The respondent agreed to represent her on a contingency fee basis, but did not provide her with a written contingency fee agreement.

c. At the time the respondent agreed to represent Ms. Shaffer, Ms. Shaffer had already submitted a complaint to the civil rights division of the Colorado Department of Regulatory Agencies.

d. On January 6, 1998, the respondent attended a settlement conference with Ms. Shaffer at the Greeley Regional Office of the Civil Rights Division. At that conference, Ms. Shaffer's employer offered to settle her claim for payment of $25,000.00.

e. The respondent advised Ms. Shaffer not to accept the offer, and indicated that he believed her claim was worth $400,000.00.

f. The parties did not reach a settlement through the assistance of the Civil Rights Division and, on June 30, 1999, the Civil Rights Division issued to Ms. Shaffer a right to sue letter.

g. The respondent agreed to file Ms. Shaffer's case in federal court, and requested $150.00 for the filing fee. The respondent did not request any further retainer for his representation in the matter.

h. On July 22, 1998, Ms. Shaffer paid the respondent $150.00 for the filing fee. The respondent promised to file a complaint in federal court promptly.

i. Throughout August and the first half of September 1998, Ms. Shaffer called the respondent's office frequently. She was unable to speak with the respondent again until she met with him on September 15, 1998, at the respondent's office. At the meeting, the respondent showed Ms. Shaffer the complaint he had prepared and promised to file it the following day. The respondent also told Ms. Shaffer that he had made arrangements to have the complaint served on the defendant immediately.

j. During the September 15 meeting, the respondent also told Ms. Shaffer that it would take approximately two years for the case to be heard by the court and that he would notify her when it was time to meet to prepare for trial.

k. Ms. Shaffer received no further communication from the respondent after September 15, 1998.

l. According to the court file, the respondent did file a complaint on Ms. Shaffer's behalf on September 25, 1998.

m. On March 22, 1999, Magistrate Judge Michael J. Watanabe entered an order directing Ms. Shaffer as plaintiff to show cause in writing why her case should not be dismissed for failure to prosecute. The certificate of mailing on the order indicates that it was mailed to the respondent on March 23, 1999.

n. The respondent did not send a copy of the order to Ms. Shaffer, nor did he notify her that the order had been issued.

o. The respondent failed to respond to the order to show cause. Accordingly, Magistrate Judge Watanabe issued his recommendation that the matter be dismissed for failure to prosecute on April 14, 1999. The order provides that a party's failure to file and serve written objections to the recommendations would preclude the party from a *de novo* determination by the district court judge and would also preclude appellate review of both factual and legal questions. The order was mailed to the respondent on April 15, 1999.

p. Again, the respondent failed to submit any response or objection to dismissal of the case. The respondent also failed to notify Ms. Shaffer that action was required to prevent her case from being dismissed.

q. On April 28, 1999, Judge Richard P. Matsch signed an order adopting Magistrate Judge Watanabe's recommendations and dismissing Ms. Shaffer's case.

r. Ms. Shaffer attempted to contact the respondent in early 2000 concerning the status of her case. The respondent's telephone number was disconnected and she had no further information about how to reach him. She did not receive any communication from the respondent indicating that he had been placed on disability inactive status and was not able to continue representing clients after October 1999.

s. On April 21, 2000 Ms. Shaffer contacted the U.S. District Court herself and learned that her case had been dismissed in April 1999.

t. The respondent neglected a legal matter entrusted to him by Ms. Shaffer, and abandoned her as a client, in violation of Colo. RPC 1.3.

u. The respondent failed to keep Ms. Shaffer reasonably informed about the status of a matter and to comply with reasonable requests for information, in violation of Colo. RPC 1.4(a).

v. Through his neglect and lack of communication when action and communication were required, the respondent abandoned Ms. Shaffer as a client.

Pound Matter

a. On February 18, 1999, Mr. Pound retained the respondent to represent him in a contract dispute. Mr. Pound paid the respondent $2,500.00 in advance for the representation, with the understanding that the payment would cover all fees and costs for representation through the entire litigation process.

b. At the time Mr. Pound retained the respondent, he explained to the respondent that he had borrowed the fee from his elderly mother and wanted to move the case forward as quickly as possible so that he could pay her back. Mr. Pound also provided the respondent with sufficient information to put him on notice that the statute of limitation might run in early 2000.

c. On approximately May 30, 1999, Mr. Pound received from the respondent a verified complaint the respondent had prepared for filing in Douglas County District Court. Mr. Pound immediately signed the verification on the complaint and sent it back to the respondent via overnight mail on June 1, 1999.

d. From June until November 1999, Mr. Pound called the

respondent frequently about the status of the lawsuit. The respondent continually assured Mr. Pound that he was handling the matter and that any delay was the result of difficulty in effecting service on the defendant.

e. In November 1999, Mr. Pound received a letter from the respondent in which the respondent indicated he would no longer be able to represent Mr. Pound because of his transfer to disability inactive status. In the letter, the respondent also indicated that Michael Varallo, Esq., would take over all of the respondent's cases.

f. When Mr. Pound contacted Mr. Varallo, Mr. Varallo indicated that he could not represent him because it would be a conflict of interest for him. In a letter dated December 6, 1999, Mr. Varallo indicated to Mr. Pound that he had reviewed Mr. Pound's file at no charge to Mr. Pound and agreed that he had received no benefit from the respondent's services in the matter. Mr. Varallo also advised the respondent, through his counsel, that Mr. Pound should receive a full refund of his retainer.

g. In a separate letter to the Office of Attorney Regulation Counsel, Mr. Varallo provided similar information. He sent a copy of that letter to the respondent and to his attorney, Daniel Schendzielos, Esq.

h. Mr. Pound had to retain another attorney to file his suit for him. The new attorney filed suit in January 2000, and had no difficulty effecting service of process on the defendant.

i. The respondent has neither accounted to Mr. Pound for the advance payment of fee, nor has he refunded any portion of the funds.

j. The respondent neglected a legal matter entrusted to him, in violation of Colo. RPC 1.3.

k. The respondent failed, upon termination of his representation, to take steps to the extent reasonably practicable to protect Mr. Pound's interests, by surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned, in violation of Colo. RPC 1.16(d).

l. The respondent, through his continued failure to refund the unearned retainer he was paid by Mr. Pound, has converted a client's funds to his own use, in violation of Colo. RPC 8.4(c).

Roberson Matter

a. In April 1999, Sherry Petarde was charged with theft in Logan County District Court, Case No. 99CR37. Shortly thereafter, she

retained the respondent to represent her in the case. Ms. Petarde paid the respondent $2,500.00 in advance for the representation.

b. On April 29, 1999, the respondent entered his appearance in Ms. Petarde's case. From April 30, 1999, through July 9, 1999, the respondent filed three separate motions to continue the advisement hearing in the case, based on the respondent's other commitments.

c. On July 23, 1999, the respondent appeared for the advisement hearing and entered a not-guilty plea on Ms. Petarde's behalf. Shortly thereafter, the case was set for trial commencing January 25, 2000. The respondent did not engage in any further activity of record in Ms. Petarde's case, nor did he have any further communication with Ms. Petarde.

d. As stated above and for the reasons indicated, on October 13, 1999, the respondent was placed on disability inactive status, and has remained on disability inactive status continuously since.

e. The respondent failed to notify Ms. Petarde that he would not be able to continue representing her. The respondent also failed to notify the district attorney's office and the court that he would not be able to continue representing Ms. Petarde.

f. The respondent never filed a motion to withdraw from representation in Ms. Petarde's case.

g. During a two-month period leading up to the trial date, Ms. Petarde attempted to contact the respondent by telephone on several occasions concerning her case. She left messages for the respondent that were never returned.

h. Approximately one week before the scheduled trial date, Ms. Petarde made a final attempt to contact the respondent by telephone and learned that his telephone number had been disconnected.

i. On January 25, 2000, the date scheduled for the trial in Ms. Petarde's case, the respondent failed to appear or to provide any explanation as to why he could not appear on Ms. Petarde's behalf.

j. Because of the respondent's failure to appear or provide prior notice that he could not continue to represent Ms. Petarde, the trial date had to be rescheduled.

k. Ms. Petarde did not qualify for a public defender or for appointed counsel. She also did not have sufficient funds available to

retain another attorney. Therefore, she entered into a plea agreement without the assistance of counsel.

l. The respondent has not provided any billing statements or accounting to Ms. Petarde concerning the funds she paid to him, nor has he refunded the unearned fee paid to him in advance for representation.

m. The respondent neglected a legal matter entrusted to him, in violation of Colo. RPC 1.3.

n. The respondent failed to keep Ms. Petarde reasonably informed about the status of a matter and promptly comply with reasonable requests for information, in violation of Colo. RPC 1.4(a).

o. The respondent failed, upon termination of his representation by virtue of his placement on disability inactive status, to take steps to the extent reasonably practicable to protect Ms. Petarde's interests, by refunding any advance payment of fee that had not been earned, in violation of Colo. RPC 1.16(d).

p. The respondent, through his continued failure to refund the unearned retainer he was paid by Ms. Petarde, has converted a client's funds to his own use, in violation of Colo. RPC 8.4(c).

q. The respondent failed to comply with the requirements of C.R.C.P. 251.28, concerning required notice to clients and parties in litigation upon transfer to disability inactive status.

Rivas Matter

a. In August 1999, Mr. Rivas retained the respondent to represent him in seeking a new trial in Case No. 98CR1345. The respondent confirmed in a letter to Mr. Rivas dated August 31, 1999, that he was to be paid $1,500.00 for his services in seeking a new trial only.

b. On October 8, 1999, Mr. Rivas paid the respondent an additional $2,500.00 to represent him in defending against additional criminal charges that had been filed against Mr. Rivas in January 1999, in Weld County District Court, Case No. 99CR114.

c. The respondent prepared and filed a motion for new trial and appeared for a hearing with respect to the motion in Case No. 98CR1345. That hearing was held in September 1999, and the motion for new trial was denied.

d. On October 12, 1999, the respondent entered his appearance for Mr. Rivas in open court in Case No. 99CR114. At the same time, Todd Taylor, Esq., who had been representing Mr. Rivas in the case, was allowed to withdraw. All other issues that had been scheduled to be heard on October 12, 1999, were continued to a later date.

e. On October 13, 1999, the respondent was placed on disability inactive status as a result of his mental state and his involvement in a serious automobile accident in which he incurred personal injuries. The respondent has remained on disability inactive status continuously since that date.

f. Other than appearing and entering an appearance on behalf of Mr. Rivas, the respondent performed no services for Mr. Rivas in Case No. 99CR114.

g. After learning that he would be on disability inactive status, the respondent notified Mr. Rivas that he would no longer be able to represent him in his pending criminal matters. The respondent indicated in a letter to Mr. Rivas that Michael Varallo, Esq., would take over the representation and that no additional payment would be required.

h. However, the respondent allegedly did not make any financial arrangements with Mr. Varallo for Mr. Varallo to take over representation of Mr. Rivas.

i. After learning of the representations made to Mr. Rivas by the respondent, Mr. Varallo contacted the respondent and informed him that he did not intend to represent any of the respondent's former clients unless satisfactory financial arrangements were made and unless the clients agreed to have Mr. Varallo represent them. Respondent claims that Mr. Varallo owes him an account and therefore a financial agreement was in place to service some of Respondent's former clients.

j. Mr. Varallo did represent Mr. Rivas briefly, but never received from the respondent any of the funds that had been paid to the respondent by Mr. Rivas.

k. After learning that the respondent did not make financial arrangements for Mr. Varallo to represent him and that the respondent was still holding his funds, Mr. Rivas demanded a refund of the unearned fees he paid to the respondent. Mr. Rivas also contacted the Weld County District Attorney's Office concerning the matter.

l. In November of 1999, the Weld County District Attorney's Office contacted Daniel J. Schendzielos, Esq., the attorney representing

the respondent in pending disciplinary proceedings, concerning Mr. Rivas' allegations. Ultimately, the District Attorney's Office determined that the matter was a civil dispute and a disciplinary matter and did not file any criminal charges.

m. Despite the efforts of Mr. Rivas and the contact made by the Weld County District Attorney's Office, the respondent has not refunded any portion of the advance payment of fee given to him by Mr. Rivas.

n. While the respondent arguably performed the services for which he was paid $1,500.00 in regard to Case No. 98CR1345, it is the People's positions that the respondent provided no substantive services in regard to Case No. 99CR114. The respondent disagrees with the People and states that he did perform services as agreed for Mr. Rivas.

o. The respondent failed to account for Mr. Rivas' funds when requested to do so, in violation of Colo. RPC 1.15(b).

p. The respondent failed, upon termination of his representation in Case No. 99CR114, to refund the advance payment of fee that had not been earned, in violation of Colo. RPC 1.16(d).

Unrue Matter

a. In September 1999, Ram Swab Services, LLC ("Ram") learned from the Social Security Office that Ram had an incorrect Social Security number for Fernando Garcia, one of its employees. When Ram investigated, they found that Mr. Garcia, who was not a U.S. citizen, might have a problem with his "green card."

b. On September 13, 1999, Mike Reavis of Ram and Mr. Garcia met with the respondent concerning the matter. The respondent advised that Mr. Garcia could obtain a new green card and then apply for a new Social Security number.

c. The respondent stated that he could provide the necessary services for a fee of $1,500.00, paid in advance.

d. On September 13, 1999, Ram wrote a check to the respondent for $1,500.00 to retain him on behalf of Mr. Garcia. The respondent told Mr. Reavis that he would file the application with the Immigration and Naturalization Service ("INS") the following week.

e. On approximately October 4, 1999, Suzanne Peterson from Ram called the respondent's office regarding the status of Mr. Garcia's case. The respondent's secretary told Ms. Peterson that Mr. Garcia's

application had been submitted to the INS and, therefore, Mr. Garcia could return to work.

f. Ram representatives heard nothing further from the respondent through the end of the year. In early January 2000, Ram learned from Mr. Garcia that he had received a letter from the respondent in December 1999 advising that the respondent could not continue to represent Mr. Garcia because of injuries suffered in an automobile accident. In the letter, the respondent indicated that Michael Varallo, Esq., would be taking over all of his cases.

g. On or about January 14, 2000, Mr. Reavis spoke with Mr. Varallo and learned that Mr. Varallo did not have Mr. Garcia's file and knew nothing about his case.

h. Although the respondent did talk to Mr. Varallo about handling some of his cases after he was transferred to disability inactive status, the respondent did not provide Mr. Varallo with all of his files, nor did he turn over to Mr. Varallo any of the advance payments that he had received from clients. Respondent believes that Mr. Varallo owes him an account and should offset any amounts earned for providing services to his former clients against the account.

i. On or about January 24, 2000, Mr. Reavis learned from Mr. Varallo that the INS had never received an application on Mr. Garcia's behalf. Mr. Varallo suggested that Mr. Reavis contact the respondent through his attorney, Daniel J. Schendzielos, Esq.

j. In approximately January 2000, Mr. Reavis contacted Mr. Schendzielos and demanded that the respondent turn over Mr. Garcia's file and refund the money paid to Mr. Post for representing Mr. Garcia. Mr. Schendzielos advised Mr. Reavis to re-contact Mr. Varallo.

k. No paperwork or refund has ever been provided pursuant to the request made by Mr. Reavis, and the respondent has remained on disability inactive status continuously since October 1999.

l. Mr. Garcia reimbursed Ram for the money it paid to the respondent. However, Ram had to terminate Mr. Garcia's employment because his immigration problems were not cleared up before his green card expired.

m. The respondent neglected a legal matter entrusted to him, in violation of Colo. RPC 1.3.

n. The respondent failed, upon termination of his representation

by virtue of his placement on disability inactive status, to take steps to the extent reasonably practicable to protect a client's interests, by refunding any advance payment of fee that had not been earned, in violation of Colo. RPC 1.16(d).

Nelson Matter

a. In October 1997, Ms. Nelson retained the respondent to represent her in regard to disputes with her former employer, Thomas Haygood, M.D. Ms. Nelson had worked for Dr. Haygood as a residential childcare provider for Dr. Haygood's two children for many years, and alleged that Dr. Haygood was in breach of a contract for payment of deferred compensation. She also alleged she had suffered a work-related injury while employed by Dr. Haygood.

b. The respondent agreed to represent Ms. Nelson in both matters. Ms. Nelson made an initial payment to the respondent in the amount of $200.00 on October 15, 1997.

c. The respondent did not enter into a written fee agreement with Ms. Nelson, and he did not clearly communicate to her the nature and rate of his fee. According to Ms. Nelson, the respondent initially quoted an hourly rate of $150.00 per hour, and indicated that he needed a retainer of $2,500.00. The respondent also indicated that he would handle her matters for a contingency fee of 25% to 30% of what she recovered, but would accept 15% if she paid $2,500.00 "up front."

d. Immediately after receiving the initial payment from Ms. Nelson, the respondent began corresponding with Dr. Haygood and his counsel. The respondent provided some assistance to Ms. Nelson in completing and filing a workers' compensation claim form.

e. During October and November of 1997, Ms. Nelson made payments to the respondent totaling $700.00. Subsequently, the respondent indicated to Ms. Nelson that he would need a total fee of $5,000.00 to handle the matters.

f. Ms. Nelson paid the respondent another $1,000.00 in August 1998, and $3,300.00 in September 1998, for a total of $5,000.00.

g. The respondent never provided Ms. Nelson with any billing statements, nor did he provide her with any explanation of how the $5,000.00 would be applied.

h. In January 1998, counsel for Dr. Haygood served interrogatories on the respondent on behalf of Ms. Nelson in the workers'

compensation matter. Ms. Nelson answered the interrogatories and returned them to the respondent with documents responsive to requests made by opposing counsel.

i. The respondent failed to serve the interrogatory responses on opposing counsel until after opposing counsel filed a motion to compel and a subsequent motion to dismiss when the respondent did not comply promptly with an order directing service of discovery responses. Opposing counsel withdrew the motion to dismiss in late March 1998 when the respondent finally served the discovery responses he had been holding.

j. The respondent did not file a response to the motion to compel or the motion to dismiss, and did not advise Ms. Nelson that the motions had been filed.

k. In January of 1998, the respondent filed an application for hearing and notice to set the workers' compensation case for hearing. Counsel for Dr. Haygood filed a response, but the respondent failed to take the required steps to set the matter for a hearing. In fact, there was no activity of record in the workers' compensation matter by the respondent after January 1998.

l. Throughout 1998, Ms. Nelson urged the respondent to commence a civil action with respect to her wage claim. The respondent continually made excuses for not filing the civil suit and promised to get it filed. The respondent cancelled appointments frequently when Ms. Nelson insisted on meeting with him concerning the matter.

m. In October of 1998, the respondent promised Ms. Nelson that he would have her suit ready for filing. When he did not, Ms. Nelson went to the respondent's office and demanded her file. She was allowed to retrieve approximately half of her original records from the respondent in early November 1998.

n. The respondent convinced Ms. Nelson to allow him to continue on the case and promised to get the civil suit filed immediately. On or about November 3, 1998, the respondent told Ms. Nelson to call him the next day and he would give her the case number for her civil action.

o. Throughout the remainder of November and the first half of December 1998, Ms. Nelson attempted to obtain information from the respondent concerning her case number. The respondent failed to return her phone calls.

p. On December 21, 1998, Ms. Nelson called the Larimer County District Court, where the complaint was to have been filed, and learned that the complaint had not been filed.

q. Ms. Nelson left further messages for the respondent in December 1998 and January 1999 advising that her suit had not been filed and asking for an explanation. The respondent left messages for Ms. Nelson promising to get the case filed and to get the complaint to a process server.

r. The respondent never filed a civil suit on Ms. Nelson's behalf. In late January 1999, Ms. Nelson told the respondent his representation was terminated and instructed him to cease any further work on her case, to send her the complete file, to provide an accounting of his hours spent on the case, and to refund the $5,000.00 she had paid to him.

s. Meanwhile, in the workers' compensation case, counsel for Dr. Haygood filed on January 27, 1999, a petition to close the claim because the matter had not been set for hearing and there had been no activity of record for more than six months. On February 26, 1999, the division of workers' compensation issued an order to show cause why the workers' compensation claim should not be dismissed, and mailed a copy of the order to the respondent.

t. In the petition to close claim, opposing counsel alleged that there had been no activity of record, but that in June 1998, a verbal agreement to settle the claim had been reached between counsel. Dr. Haygood's counsel mailed settlement documents to the respondent but had not received signed documents. The respondent, however, never obtained Ms. Nelson's authority to settle the case and did not advise her of the status of his settlement negotiations.

u. In February 1999, Ms. Nelson retained Lee Christian, Esq., to take over representation in her disputes with Dr. Haygood. From February 8, 1999, through May 3, 1999, Mr. Christian communicated with the respondent by phone and through written correspondence in an attempt to obtain Ms. Nelson's file from the respondent. Among the items that Mr. Christian specifically sought were the remainder of Ms. Nelson's original records and two checks payable to Ms. Nelson from Dr. Haygood that had been sent to her as severance pay, totaling approximately $2,400.00. On the respondent's advice, Ms. Nelson did not negotiate the checks and left the checks in the respondent's possession.

v. After making several excuses and claiming that he had already given Ms. Nelson all of her original documents, the respondent

told Mr. Christian that Ms. Nelson's file had been completely destroyed by smoke damage as a result of a fire that occurred in the respondent's office building in December 1998.

w. In July 2000, the respondent made his files available for inspection for the first time. Among his files was a file concerning Ms. Nelson's case, which included many of the original documents and records belonging to Ms. Nelson, including an original check payable to Ms. Nelson from Dr. Haygood in the amount of $1,153.00.

x. After Mr. Christian took over representation, he was able to negotiate a settlement with Dr. Haygood's counsel with respect to all claims. According to Mr. Christian, however, the settlement value of Ms. Nelson's claims was impaired by the respondent's incompetence or neglect in failing to give proper notice of claim under Colorado's wage claim statute.

y. Mr. Christian has also demanded on Ms. Nelson's behalf, an accounting from the respondent with respect to the $5,000.00 paid by Ms. Nelson for the respondent's fees. The respondent has never provided an accounting, nor has he refunded any of the advance payment.

z. The respondent failed to provide competent representation to Ms. Nelson, in violation of Colo. RPC 1.1.

aa. The respondent neglected legal matters entrusted to him by Ms. Nelson, in violation of Colo. RPC 1.3.

bb. The respondent failed to keep Ms. Nelson reasonably informed about the status of her matters and to promptly comply with reasonable requests for information, in violation of Colo. RPC 1.4(a).

cc. The respondent failed to clearly communicate the basis or rate of his fee to Ms. Nelson, in violation of Colo. RPC 1.5(b).

dd. The respondent failed to render a full accounting regarding funds and Ms. Nelson requested property in which Ms. Nelson had an interest after such an accounting, in violation of Colo. RPC 1.15(b).

ee. The respondent, upon termination of his representation, failed to take steps to the extent reasonably practicable to protect Ms. Nelson's interests, by surrendering papers and property to which Ms. Nelson is entitled.

FACTORS IN MITIGATION AND AGGRAVATION

a. Respondent now recognizes and admits the serious nature of the misconduct he has engaged in over an extended period of time, he is remorseful over the injury he has caused to his clients and enters into the above stipulated factual basis as part of a demonstrative act expressing a significant change in his life's direction.

b. The respondent shall, in accordance with the Colorado Rules of Evidence and the At Issue Conference Order entered in these matters, be allowed to present any and all evidence intended to demonstrate that physical testing indicates he has been suffering from a long-term physical/mental condition resulting at times in severe depression, hyperactivity, attention deficit disorder, poor stress control, nervousness, anxiety, mood swings, severe inner tension, episodic anger, and otherwise manifesting itself in the form of the serious professional neglect admitted to above. The respondent anticipates that psychological and psychiatric testimony from the respondent's experts will demonstrate that he has manifested depression in his daily life and is being treated with anti-depressant medication at this time. By stipulating that the respondent shall be entitled to introduce evidence of these conditions as described above, the complainant does not stipulate that such conditions exist or the extent to which any such psychological or psychiatric conditions constitute mitigation with respect to the admitted misconduct.

c. The respondent shall also be entitled to introduce any additional evidence, in accordance with the Colorado Rules of Evidence and the At Issue Conference Order entered in these matters, concerning any applicable factors in mitigation.

d. The complainant shall be entitled to introduce any evidence, in accordance with the Colorado Rules of Evidence and the At Issue Conference Order in these matters, concerning relevant factors in aggravation.

7. Through this Stipulation of Facts and Admission of Misconduct, the parties do not intend to stipulate that discipline in any particular form is warranted. Rather, it is the intention of the complainant and the respondent to proceed to trial before the full hearing board concerning the appropriate level of discipline, if any, to be imposed based upon the stipulated facts and admitted misconduct as set forth herein.

WHEREFORE, Daniel Jefferson Post, the respondent; Daniel J. Schendzielos, counsel for the respondent; and Gregory G. Sapakoff, Assistant Regulation Counsel, attorney for the complainant, acknowledge by signing this document that they have read and reviewed the above

and request the Presiding Disciplinary Judge to accept this Stipulation of Facts and Admission
of Misconduct as set forth above.

The foregoing was read, understood and agreed to on this 25th day of August, 2000.

(SIGNED)

_____
Daniel Jefferson Post,
Respondent

STATE OF COLORADO)
) ss.
COUNTY OF)

Subscribed to before me this 25th day of August, 1999 (sic), by Daniel Jefferson Post, respondent.

(SIGNED)
_____
JANICE R. TANQUARY
Witness

(SIGNED)
_____
Daniel Schendzielos, #22542
Attorney for Respondent

(SIGNED)
_____
Gregory Sapakoff, #16184
Assistant Regulation Counsel
Attorney for Complainant

Additional evidence presented at the hearing established that on October 13, 1999, Post was placed on disability inactive status, and has remained on disability inactive status continually since that date. In December 1999 Post was examined by a medical professional and found to have suffered from mild to moderate depression and post-concussive syndrome resulting from the auto accident in September 1999. The medical professionals who examined Post between September 2000 through January 2001 concluded that Post suffered from major depression and had developed an affective illness with elements of hypomania. Both Dr. Boyle and Dr. Kooken agreed that Post suffered

from depression and was improving with treatment. The medical evidence did not establish that Post's auto accident and the resulting medical impairment was the cause of his misconduct. Moreover, the medical evidence did not support a finding that Post has demonstrated a meaningful period of sustained recovery.

II. ANALYSIS OF DISCIPLINE

The stipulated facts set forth above detail Post's acts of misconduct over a period of several years with respect to legal matters Post was retained to handle for nineteen different clients or groups of clients. Post admits that he has engaged in an extensive course of misconduct in violation of The Colorado Rules of Professional Conduct involving neglect of client matters, failure to communicate with clients when communication was necessary or could reasonably have been expected by clients, failure to return client property and funds when appropriate or when his representation had been terminated, failure to provide competent representation to clients, engaging in dishonesty and misrepresentations in dealings with clients, and conversion of clients' funds. Many of Post's clients paid him in advance for legal services Post never provided. Post has not refunded any of the unearned fees to those clients who paid him in advance for his representation.

Post admitted that he committed many separate violations in regard to numerous client matters. In two matters, Post violated Colo. RPC 1.1 by failing to provide competent representation to his client. In eighteen of the nineteen client matters, Post neglected legal matters entrusted to him, in violation of Colo. RPC 1.3. In some situations, Post neglected to take steps that were required or needed in the particular circumstances of a case in which he was providing some level of service. In other cases, Post neglected to provide any meaningful services whatsoever and effectively abandoned his clients.

In fifteen separate matters, Post violated Colo. RPC 1.4(a) by failing to keep clients reasonably informed about the status of matters and/or failing to comply with reasonable requests for information from clients. Not only did Post fail to take routine steps to keep his clients informed about their cases, he routinely failed to return telephone calls from his clients -- even those concerning urgent matters.

In two matters, Post violated Colo. RPC 1.5(a), by charging unreasonable fees to clients in light of the services performed. In nine matters, Post simply failed to perform the services for which he was paid in advance and then failed to account to his clients for the funds, in violation of Colo. RPC 1.15(b), and/or failed to refund the unearned fee after his representation was terminated, in violation of Colo. RPC 1.16(d).

Post admits to numerous violations of Colo. RPC 8.4(c)(making misrepresentations to clients or others); Colo. RPC 8.4(d)(conduct prejudicial to the administration of justice in ongoing litigation matters); and Colo. RPC 8.4(h)(other conduct adversely reflecting on his fitness to practice law), all of which are factually supported by the Stipulation.

In nine matters, Post admits that he converted client funds, and that such conversion was conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Colo. RPC 8.4(c). Post argues, however, that his conversion of client funds was reckless rather than knowing. The People argue that Post's conversion of his clients' funds was knowing, considering the amount of time he retained the funds without any effort to refund or account for the funds to his clients. In all nine matters, Post retained his clients' funds for a significant amount of time: in the Drake matter, since July 1996, in the Griess matter, since October 1997, in the Burkhardt matter, since October 1998, in the Jacobson matter, since June 1997, in the Lamb matter, since April 1997, in the Trenado matter, since October 1998, in the Allmer matter, since September 1996, in the Pound matter, since February 1999, and in the Roberson matter, since April 1999.

The PDJ and Hearing Board concluded that Post's retention of clients' funds for an extended period of time, coupled with his lack of communication with his clients, his affirmative misrepresentations in many cases that he had performed or would perform the work he had been paid to do, and his continuing failure to account for or return the unearned funds constitutes willful and knowing conduct. *See People v. Elliott*, 99PDJ059, slip op. at 8 (consolidated with 99PDJ086) (Colo. PDJ March 1, 2000), 29 Colo. Law. 112, 114 (May 2000)(disbarring attorney for his accepting advance fees from two clients, performing some but not all of the services for which he was paid, retaining the fees for one year in one matter and two years in another matter, and abandoning the clients, *citing People v. Singer*, 897 P.2d 798, 801 (Colo. 1995)(holding that extensive and prolonged neglect is considered willful misconduct)), *People v. Silvola*, 915 P.2d 1281, 1284 (Colo. 1996)(finding that misconduct that occurred over an extended period of time must be deemed to be willful). *See e.g. People v. Bradley*, 825 P.2d 475, 476-77 (Colo.1992) (lawyer's inaction over a period of two years deemed willful misconduct); *People v. Williams*, 824 P.2d 813, 814 (Colo.1992) (continued and chronic neglect over extended periods of time must be considered willful); *People v. May*, 745 P.2d 218, 220 (Colo.1987) (same).

Many of Post's clients demanded refunds many months or years ago and despite this, Post continued to exercise unauthorized dominion

and control over their funds and made no effort to refund the unearned amounts. To date, Post has not made restitution to the clients, with the exception of Mr. Griess, who obtained a default judgment against him. Reckless conduct alone cannot support a finding of knowing conversion. *See People v. Small*, 962 P.2d 258, 259-60 (Colo. 1998)(holding that a reckless state of mind, constituting scienter, may be considered the equivalent to "knowing" for disciplinary purposes, except where an attorney's alleged misappropriation of client funds is concerned, *citing People v. Zimmermann*, 922 P.2d 325, 329 (Colo. 1996)). The conduct evidenced in the Stipulation, however, is not just reckless. Over an extended period of time with a significant number of clients, Post repeatedly received funds from clients, failed to perform the agreed upon legal services and failed to account for or refund the unearned fees. It must be inferred from such an extensive pattern of misconduct that Post's actions were knowing.

The only appropriate presumptive sanction in this case is disbarment. Pursuant to the American Bar Association *Standards for Imposing Lawyer Sanctions* (1991 and 1992 Supp.) ("ABA *Standards*") 4.11, disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

In the instant case, even if Post's conversion of client funds were removed, disbarment is the presumptive sanction considering the disturbing extent of Post's neglect in nineteen different matters and the numerous affirmative misrepresentations Post made in order to conceal his misconduct from his clients. *See e.g.* ABA *Standards* 4.41(c)(stating that disbarment is generally appropriate when a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client); *People v. Murray*, 887 P.2d 1016, 1021 (Colo. 1994) (lawyer disbarred for knowingly failing to perform services for clients in ten separate matters constituting a pattern of neglect and causing potentially serious harm to clients); *People v. Dulaney*, 785 P.2d 1302, 1306 (Colo. 1990) (lawyer disbarred for chronic neglect of client matters and use of deceit to cover the neglect).

The facts contained in the stipulation establish that Post caused both injury and serious injury to his clients. Pursuant to ABA *Standards* 4.41(a), disbarment is also generally appropriate when a lawyer abandons the practice of law and causes serious or potentially serious injury to a client. Post admits that he abandoned Mr. Allmer and Ms. Shaffer as clients through his neglect and lack of communication when action and communication were required in their cases. The abandonment of even two clients carries the presumption of disbarment in Colorado. *See e.g. Elliott*, 99PDJ059, slip op. at 8, 29 Colo. Law. 112,

114 (attorney disbarred for accepting advance fees from two clients, performing some but not all of the services for which he was paid and abandoning the clients); *People v. Pedersen*, 99PDJ024, slip op. at 5 (Colo. PDJ 1999), 28 Colo. Law. 134, 135 (November 1999) (lawyer disbarred for failing to provide legal services for which he was paid a $400.00 retainer, failing to communicate with his client for over fifteen months, failing to notify his client of his office relocation, and failing to refund or account for the unearned retainer, which, taken together, established a degree of neglect constituting abandonment); *People v. Townshend*, 933 P.2d 1327 (Colo. 1997) (lawyer disbarred for accepting retainers from two clients and then effectively abandoning their matters).

The PDJ and Hearing Board considered matters in mitigation and aggravation pursuant to ABA *Standards* 9.22 and 9.32 respectively. In aggravation, the PDJ and Hearing Board considered Post's prior disciplinary offenses pursuant to 9.22(a). Post received a letter of private admonition in 1995 regarding violations of Colo. RPC 1.4(b)(failing to communicate with the client) and Colo. RPC 1.5(b)(charging an unreasonable fee) and Colo. RPC 1.15(a)(failing to segregate client funds). In October 1996, Post received a private censure regarding violations of Colo. RPC 1.3(neglect of a legal matter), Colo. RPC 1.7(a)(conflict of interest) and Colo. RPC 1.1(incompetent representation). Additionally, Post received two letters of admonition in the State of West Virginia prior to being licensed in Colorado.

Post initially engaged in bad faith obstruction of the disciplinary process as evidenced by his frequent failure to comply with discovery and disclosure obligations during the progress of these disciplinary matters, *see id.* at 9.22(e).[1] Two of the matters consolidated into this proceeding were filed in 1998, and were initially set for trial in 1999. Post repeatedly failed to comply with reasonable discovery requests; he repeatedly failed to respond to written discovery and failed to provide requested documentation. The People filed several motions and the PDJ issued several orders compelling Post to respond to discovery. Post failed to do so. In November 1999, Mr. Schendzielos entered his appearance on behalf of Post and thereafter Post cooperated with the Office of Attorney

[1] The complaint in Case No. GC98B102 was filed on July 31, 1998; the Complaint in GC98B122 was filed on December 7, 1998, the Complaint in Case No. 99PDJ031 was filed on February 26, 1999, the Complaint in 00PDJ002 was filed on January 4, 2000, and the Complaint in Case No. 00PDJ063 was filed on August 17, 2000. In Case No. GC98B102, Post moved to stay proceedings in January 1999, moved to vacate the trial date several times, failed to respond to discovery requests prompting the People to file four motions to compel and three motions for imposition of sanctions. In Case No. GC98B122, Post moved to stay proceedings once, moved to vacate the trial date twice, and failed to respond to discovery requests prompting the People to file two motions to compel and one motion for imposition of sanctions. In Case No. 99PDJ031, prior to Mr. Schendzielos' involvement, Post moved to continue the trial date once, and failed to comply with discovery requests. The People were again required to move to compel discovery.

Regulation Counsel and the progress of this consolidated case resumed a normal course.

Post had a dishonest or selfish motive, *see id.* at 9.22(b), engaged in a pattern of misconduct, *see id.* at 9.22(c), committed multiple offenses, *see id.* at 9.22(d); and submitted false statements during the disciplinary process prior to entering into the stipulation of facts, *see id.* at 9.22(f).

Additionally, many of Post's clients were vulnerable, including Betty Drake, Eugene Griess, Sandra Shaffer, Patti Nelson, Irma Segura, Michael Pound, Fernando Garcia in the Unrue Matter, and Sherry Petarde, *see id.* at 9.22(h); Post had substantial experience in the practice of law (licensed since 1992 in Colorado and since 1983 in Virginia), *see id.* at 9.22(i), and Post has been indifferent to making restitution, *see id.* at 9.22(j).

In mitigation, Post argues that the PDJ and Hearing Board should consider Post's mental disability or impairment as a mitigating factor pursuant to ABA *Standards* 9.32(i)(1992 Supp.) and the fact that Post is now remorseful, a mitigating factor pursuant to ABA *Standards* 9.32(l). With regard to Post's mental disability, a mental disability may be considered as a factor in mitigation when:

> (1) there is medical evidence that the respondent is affected by a . . . mental disability;
> (2) the . . . mental disability caused the misconduct;
> (3) the respondent's recovery from the . . . mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
> (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely. ABA *Standards* 9.32(i).

Although it was established that Post suffered from mild to moderate depression, post-concussive syndrome, and an affective disorder, no evidence was presented to establish that the mental disability caused the misconduct, that Post has demonstrated a meaningful and sustained period of successful rehabilitation, nor that Post's recovery arrested the misconduct and that a recurrence of that misconduct is unlikely. *See e.g., People v. Goldstein,* 887 P.2d 634, 641 (Colo. 1994)(stating that to establish the presence of a mental disability as a factor in mitigation, the respondent must satisfy all four elements of section 9.32(i)). *See also* Commentary to ABA *Standards* 9.32 (Supp. 1992), providing that "[i]ssues of . . . mental disability . . . offered as mitigating factors in disciplinary proceedings require careful analysis.

Direct causation between the disability . . . and the offense must be established." Accordingly, the PDJ and Hearing Board do not consider Post's mental condition as a mitigating factor.

The PDJ and Hearing Board further did not find that Post demonstrated remorse, which can be considered as a mitigating factor pursuant to ABA *Standards* 9.32(l). Although Post eventually acknowledged his misconduct by submission of the stipulation, he testified at the sanctions hearing that the person who engaged in the misconduct "was not him." He disowned the harm that resulted to his clients, and still fails to understand how the misconduct occurred. Although he is now willing to make restitution to his clients, he has made no effort to do so prior to the sanctions hearing. The fact that Post ultimately entered into the stipulation reciting his misconduct after Mr. Schendzielos entered his appearance does provide some measure of mitigation. The degree of that mitigation is, however, overcome by Post's extensive obstruction of the disciplinary process during the period of time he acted as his own attorney in these cases.

Disbarment is the only appropriate sanction for the extensive pattern of misconduct in which Post engaged. No other sanction warrants serious consideration, especially in light of the significant aggravating factors and the lack of any substantial factors in mitigation. Post expressed his willingness to pay restitution in order to restore his clients the advance payment of fees that they made which were not earned and which have never been refunded.

III. ORDER

It is therefore Ordered:

1. That DANIEL J. POST, attorney registration number 21174 is DISBARRED from the practice of law effective thirty-one days from the date of this Order, and his name shall be stricken from the roll of attorneys licensed to practice law in this state;

2. Post shall pay or make arrangements to pay the following amounts in restitution to the following clients within 24 (twenty-four) months of the date of this Order:

   A. Carl Langley $5,000;
   B. Betty Drake $2,500;
   C. Patti Nelson $5,000, and
   D. Sherry Petarde $2,500

3. Post shall pay the following amounts to the Client Protection Fund to reimburse that fund for amounts paid to his prior clients as a result of his conduct prior to filing a Petition for Readmission:

A. Karen Burkhart $1,500;
B. Michael Pound $2,500;
C. Dee Unrue (on behalf of Fernando Garcia) $1,500;
D. Pam Jacobson $2,500
E. Susan Lamb $2,500;
F. Joel Trenado $2,250;
G. Bruce Allmer $3,000, and
H. Henry Rivas $2,500.

4. Post is ORDERED to pay the costs of these proceedings;

5. The People shall submit a Statement of Costs within fifteen (15) days of the date of this Order. Respondent shall have ten (10) days thereafter to submit a response thereto;

6. Prior to the submission of any Petition for Readmission pursuant to C.R.C.P. 251.29, Post shall demonstrate that he has timely paid restitution to the clients set forth above, and to the Client Protection Fund.

DATED THIS 15th DAY OF MAY, 2001.

(SIGNED)

ROGER L. KEITHLEY
PRESIDING DISCIPLINARY JUDGE

(SIGNED)

EDWIN S. KAHN
HEARING BOARD MEMBER

(SIGNED)

MARILYN J. DAVID
HEARING BOARD MEMBER