

People v. James Spencer Sarpong. 16PDJ052. February 14, 2017.

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred James Spencer Sarpong (attorney registration number 38669) from the practice of law. Sarpong's disbarment took effect on March 21, 2017.

Sarpong failed to communicate with three immigration clients and failed to exercise diligence in advancing their matters. Over time, this neglect amounted to abandonment of these vulnerable clients. In one matter, he also retained unearned fees. And later, he disregarded requests for information from disciplinary authorities.

Through this misconduct, Sarpong violated Colo. RPC 1.1 (a lawyer shall provide competent representation); Colo. RPC 1.3 (a lawyer shall act with diligence in representing a client); Colo. RPC 1.4(a)(3) (a lawyer shall keep clients reasonably informed about the status of their matters); Colo. RPC 1.4(a)(4) (a lawyer shall comply with a client's reasonable request for information); Colo. RPC 1.15A (a lawyer shall keep client property separate from his or her own property and account for a client's funds); Colo. RPC 1.16(d) (a lawyer shall return files and unearned fees to the client upon termination of the representation); Colo. RPC 8.1(b) (a lawyer shall respond to lawful demands for information from a disciplinary authority); and Colo. RPC 8.4(c) (a lawyer shall not engage in dishonest conduct, including conversion of unearned client funds).

Please see the full opinion below.

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE</p> <p>1300 BROADWAY, SUITE 250 DENVER, CO 80203</p>	
<p>Complainant: THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondent: JAMES SPENCER SARPONG</p>	<p>Case Number: 16PDJ052</p>
<p>OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)</p>	

James Spencer Sarpong (“Respondent”) failed to communicate with three immigration clients and failed to exercise diligence in advancing their matters. Over time, this neglect amounted to abandonment of these vulnerable clients. In one matter, he also retained unearned fees. And later, he disregarded requests for information from disciplinary authorities. This misconduct warrants disbarment.

I. PROCEDURAL HISTORY

On February 25, 2016, the Colorado Supreme Court immediately suspended Respondent from the practice of law under C.R.C.P. 251.8.6. This proceeding followed.

On June 30, 2016, Katrin Miller Rothgery of the Office of Attorney Regulation Counsel (“the People”) filed a complaint in this matter with Presiding Disciplinary Judge William R. Lucero (“the Court”), and sent copies to Respondent the same day.¹ Respondent failed to answer, and the Court granted the People’s motion for default on September 26, 2016. Upon the entry of default, the Court deemed all facts set forth in the complaint admitted and all rule violations established by clear and convincing evidence.²

On January 13, 2017, the Court held a sanctions hearing under C.R.C.P. 251.15(b). Bryon M. Large represented the People; Respondent did not appear. The People’s exhibits 1-3 were

¹ The People sent copies via certified mail to Respondent at his registered business address (P.O. Box 372006, Denver, Colorado 80237), registered home address (P.O. Box 461856, Aurora, Colorado 80046), and last known address (22503 East Powers Place, Aurora, Colorado 80015).

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

admitted into evidence, and the Court heard testimony from Michelle Varela-Pinela, Andres Alba Acosta, and Christine Swenson.

II. ESTABLISHED FACTS AND RULE VIOLATIONS

The Court adopts and incorporates by reference the averments in the admitted complaint, presented here in condensed form. Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on May 16, 2007, under attorney registration number 38669.³ He is thus subject to the Court's jurisdiction in this disciplinary proceeding.⁴

The Schatzman Matter

In 2014, James Schatzman and his then-fiancée, Seung Yeon Lee, hired Respondent to represent Lee and her two children, then aged eighteen and twenty, in immigration matters. Lee and her children were interested in obtaining legal permanent resident status.

Respondent advised Schatzman and Lee to marry and to submit Lee's immigration application immediately—before the oldest child turned 21—so that Lee's children could obtain automatic permanent resident status via their mother. The couple took Respondent's advice, marrying in a matter of days and completing all of the forms that he advised them to complete.

On the couple's wedding day, they met with Respondent for the first time in person, who told them that he had a "vague recollection" of both ages eighteen and twenty-one as important for immigration purposes. He said he would research those issues. He charged them \$7,500.00 in attorney's fees, which Schatzman paid by check on October 25, 2014. Within five days, Schatzman had provided to Respondent the completed immigration paperwork, plus checks made out to United States Citizenship and Immigration Services ("USCIS") and third-party providers for various filing fees and costs, totaling approximately \$4,700.00.

In early November 2014, Schatzman received some notices from USCIS confirming receipt of the applications. Throughout November and December 2014, the couple occasionally received notices directly from USCIS, but the notices appeared incomplete. For example, the couple received a notice of a biometrics appointment for one child but not for Lee or her other child. Schatzman repeatedly emailed Respondent with questions about the status of the immigration matters, but he received no response. Meanwhile, USCIS was also sending Respondent requests for information about the pending applications, but Respondent never forwarded those requests to Schatzman or Lee.

On December 13, 2014, Respondent finally sent the couple an email, stating that he assumed they had received notices of biometrics appointments for Lee and for one of her

³ Compl. ¶ 1.

⁴ See C.R.C.P. 251.1(b).

children. In that email, Respondent informed them that the appointments had been set for December 4, 2014—nine days prior. Schatzman replied, expressing concern that Respondent had failed to inform them of the appointments, which they had not attended.

In January 2015, Schatzman discovered that he could check the status of the applications online, and found that processing of the applications had been suspended pending USCIS's receipt of additional information. He immediately emailed Respondent to inquire what information was required and why Respondent had not informed him of the requests for information. Respondent emailed back, promising to "look into this." Schatzman soon realized that he needed to submit his wife's original Korean birth certificate; he did so himself by sending it directly to USCIS.

In late January 2015, the couple visited USCIS offices to inquire what additional information was needed. The officer informed them that because the children were over the age of eighteen at the time Schatzman married their mother, Schatzman could not petition on their behalf for legal permanent resident status. They were told to use a different procedure: that once Lee obtained legal permanent resident status, she could petition for her adult children. The officer advised them to obtain different counsel, noting that any immigration attorney should have known the cutoff age for such petitions was eighteen years old.

The couple immediately terminated Respondent, requesting return of their files and a refund of \$5,000.00. Respondent sent one response suggesting that he was willing to discuss a refund, but he then stopped communicating. He has not provided any refund or returned their files.

In this matter, Respondent violated Colo. RPC 1.1, which requires a lawyer to provide competent representation; Colo. RPC 1.3, which requires a lawyer to act with diligence in representing a client; Colo. RPC 1.4(a)(3), which requires a lawyer to keep clients reasonably informed about the status of their matters; Colo. RPC 1.4(a)(4), which requires a lawyer to comply with a client's reasonable request for information; Colo. RPC 1.16(d), which requires a lawyer to return files and unearned fees to the client upon termination of the representation; and Colo. RPC 8.4(c), which prohibits a lawyer from engaging in dishonest conduct, including conversion of unearned client funds.

The Varela Matter

In May 2010, Michelle Varela-Pinela⁵ and her husband, Pascual Varela, hired Respondent to represent Mr. Varela in removal proceedings. They paid Respondent \$4,810.00 as a flat fee for his work.⁶ Respondent appeared in court with Mr. Varela for a

⁵ The People's complaint identifies her as Michelle Varela.

⁶ The Court's default order deemed this fact, as set forth in the complaint, admitted. Michelle Varela testified at the sanctions hearing, however, that her family paid Respondent \$4,600.00. The Court accepts her testimony in awarding restitution.

master calendar hearing in October 2010. There, the court set a merits hearing for March 26, 2012.

In March 2012, less than a week before the merits hearing and nearly two years after he was hired by the Varelas, Respondent filed an application for cancellation of removal. The immigration judge deemed the application abandoned because of the late filing. Respondent then filed an appeal. In February 2015, the Board of Immigration Appeals found that because the judge had not earlier advised Respondent or his clients about the potential consequences of such a late filing, the matter should be remanded for further processing.

The Varelas believed that another court date was set for May 2015. They thus traveled to Colorado for court from their new home in Nebraska. When Ms. Varela-Pinela contacted the court to confirm the date and time of the hearing, she discovered that Respondent had failed to inform her about a change in the court's schedule: the hearing had been set over until 2019. Thereafter, Ms. Varela-Pinela attempted to contact Respondent for more information about the case. Respondent has not responded to the Varelas' requests for information since mid-2015. Nor has he provided them with any refund of unearned fees or a copy of their file.

In the Varela matter, Respondent violated Colo. RPC 1.3; Colo. RPC 1.4(a)(3); and Colo. RPC 1.16(d).

The Alba Matter

Andres Alba Acosta⁷ hired Respondent in 2009 to work on his immigration matters. At that time, Alba was in removal proceedings, which remained pending from 2009 through 2015.

Alba's case was set for a hearing in June 2015. Starting in April 2015, Alba attempted to contact Respondent to prepare for the hearing. Alba visited Respondent's office during normal business hours at least five times; on each occasion Respondent's office was closed. In May 2015, Alba discovered a "For Lease" sign in Respondent's office window. Alba contacted the landlord, who informed him that Respondent was no longer using the office space. Throughout May and June 2015, Alba attempted to reach Respondent using all of the phone numbers Respondent provided him during the nearly six years of representation. None of these attempts was successful.

Alba appeared by himself at the June 2015, only to learn that it had been reset for November 2019. Notice of the rescheduled hearing had been sent to Respondent in April 2015, but Respondent never informed Alba of the change.

Alba then hired Christine Swenson, an attorney licensed in Colorado and Arizona who specializes in immigration work. Swenson's office repeatedly attempted to contact

⁷ On the stand, he identified himself as Andres Alba.

Respondent from June until September 2015. The office received just one response, in September, in which Respondent stated that he would provide a copy of Alba's file. Respondent sent a digital copy of the file but not the original paper copy. Alba claims to have paid Respondent at least \$5,610.00.⁸ Respondent did not earn all of those funds, yet he has not refunded any unearned fees to Alba.

In this matter, Respondent violated Colo. RPC 1.4(a)(3); Colo. RPC 1.16(d); and Colo. RPC 1.15A, which requires a lawyer to keep client property separate from his or her own property and to account for a client's funds.

Disciplinary Investigations

Respondent has refused to participate in the People's investigations of the Schatzman, Varela, and Alba matters. He has failed to respond to the People's demands for information. Accordingly, he has violated Colo. RPC 8.1(b), which requires a lawyer to respond to lawful demands for information from a disciplinary authority.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA Standards")⁹ and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.¹⁰ When imposing a sanction after a finding of lawyer misconduct, the Court must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

ABA Standard 3.0 – Duty, Mental State, and Injury

Duty: Respondent violated duties to his clients to act competently and diligently, to reasonably communicate, to account to them for work performed, and to protect their interests, both legal and financial. Respondent also breached his duty to the legal profession by ignoring the People's requests for information and for cooperation.

Mental State: Respondent acted knowingly in all three client matters. He also acted knowingly when he disregarded the People's investigatory requests for information concerning these matters.

Injury: Respondent's decision not to cooperate with the People in their investigation harmed the attorney regulation system and, by extension, the legal profession.

⁸ The Court's default order deemed this fact, as set forth in the complaint, admitted. Alba credibly testified at the sanctions hearing that he paid Respondent \$7,500.00. The Court does not view Alba's testimony as conflicting—the complaint states that Alba claimed to have paid Respondent "at least" \$5,610.00—and thus it accepts Alba's testimony in awarding restitution, less an application fee of \$100.00 that Alba believed Respondent had paid on his behalf. See Ex. 2.

⁹ Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).

¹⁰ See *In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).

Schatzman and Lee were seriously harmed when Respondent did not provide them incompetent legal advice, leading the couple to hastily marry and to submit frivolous applications for Lee's children. Respondent jeopardized the status of Lee's application by failing to communicate with her, causing her to miss a biometrics appointment, and failing to apprise her of additional requests for information. Finally, Respondent caused the couple serious financial injury by retaining their unearned fees.¹¹

Respondent's failure to diligently represent Mr. Varela led to the denial of Mr. Varela's application for cancellation of removal, an injury the Court adjudges as serious. Mr. Varela was forced to appeal, wasting his time and the resources of the judiciary. Later, the Varelas embarked on an eight-hour drive from Nebraska to Denver, only to find that Respondent had failed to alert them that Mr. Varela's hearing had been reset. Respondent's abandonment has continued to harm Varela and his family. As Ms. Varela-Pinela testified, Respondent has put her family through significant "pain and suffering," including the stress occasioned by not knowing the fate of her husband, disappointment her family has experienced after they had "put so much faith" in Respondent, and the uncertainty surrounding whether they will be able to find the money to hire another lawyer.

Respondent has likewise seriously injured Alba by failing to diligently represent him, failing to communicate with him, and failing to return Alba's file and fees. Alba expressed dismay that Respondent's misconduct might imperil his standing in the United States; Alba noted that because he is the "glue" that holds his family together, it "would be a big thing" if he were deported. Swenson, Alba's successor counsel, testified that Alba's case—a relatively straightforward one, she said—was continued five times between 2009 and 2013. Respondent's failure to diligently advance Alba's legal interests, Swenson explained, has prejudiced Alba, since the more time that passes, the more difficult it becomes to gather all needed documentation to support Alba's position. Respondent's failure to act with diligence has also had a profound personal effect on Alba, Swenson said. Alba's prolonged period of tenuous footing in this country has prohibited him from traveling to Mexico for many years—years during which his father passed away and his mother has seen a significant decline in her health.

Finally, Swenson explained that Respondent's misconduct has taken a toll on the immigration bar as a whole. Persuading her nervous, vulnerable clients to trust her is, in general, an uphill battle, she noted. But when someone like Respondent preys on the immigrant community, it "makes it that much more difficult" for her overcome her clients' "animosity, fear, and distrust" so that she can do her job effectively. When people like Respondent take advantage of immigrants, she remarked, it "chip[s] away at who we are as a country."

¹¹ The People seek restitution for Schatzman of \$3,030.00: the \$7,500.00 Respondent was given, minus various fees Respondent paid on the family's behalf. See, *inter alia*, Ex. 3.

ABA Standards 4.0-7.0 – Presumptive Sanction

Several ABA Standards apply in this matter. ABA Standard 4.11 calls for disbarment when a lawyer knowingly converts client property, causing the client injury or potential injury. ABA Standard 4.41 also calls for disbarment where a lawyer causes serious or potentially serious client injury by abandoning his or her practice, knowingly failing to perform services, or engaging in a pattern of neglect. Each of these three circumstances pertain here. Finally, suspension is the presumptive sanction under ABA Standard 7.2, which applies when a lawyer knowingly engages in conduct that violates a professional duty, causing injury or potential injury to a client, the public or the legal system. The Court looks to ABA Standard 7.2 where, as here, a lawyer fails to protect a client's interest on termination and fails to cooperate with disciplinary authorities.

ABA Standard 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of the presumptive sanction to be imposed, while mitigating circumstances may warrant a reduction in the severity of the sanction.¹² Six aggravating factors are present here: Respondent's dishonest and selfish motive; his pattern of misconduct; multiple offenses; his bad faith obstruction of the disciplinary system; the vulnerability of the victims in this case; and Respondent's indifference to making restitution.¹³ The Court is aware of just one mitigator: Respondent has not been disciplined before.¹⁴

Analysis Under ABA Standards and Colorado Case Law

The Court is aware of the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,¹⁵ mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."¹⁶ Though prior cases are helpful by way of analogy, the Court is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

The Colorado Supreme Court has repeatedly found disbarment warranted when a lawyer effectively abandons the practice of law and misappropriates unearned funds, thereby evincing an "extreme indifference to the welfare of his clients and the status of their cases."¹⁷ That court has also noted that where a lawyer then fails to participate in a

¹² See ABA Standards 9.21 & 9.31.

¹³ ABA Standard 9.22(b)-(e), (h), & (j).

¹⁴ ABA Standard 9.32(a).

¹⁵ See *In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *In re Fischer*, 89 P.3d 817, 822 (Colo. 2004) (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).

¹⁶ *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

¹⁷ *People v. Roybal*, 949 P.2d 993, 998 (Colo. 1997) (disbarring an attorney for abandoning clients, failing to return unearned fees, and engaging in conduct involving dishonesty); see also *In re Stevenson*, 979 P.2d 1043,

disciplinary proceeding, disbarment is plainly all the more necessary.¹⁸ Respondent's abandonment of his clients, his refusal to recompense them, and his failure to participate in these proceedings makes clear that Respondent is no longer entitled to hold a law license. The presumptive sanction of disbarment, the settled case law, and the predominance of aggravating factors, taken together, confirm that Respondent must be disbarred.

IV. CONCLUSION

In three matters, Respondent failed to communicate and failed to act with diligence, effectively abandoning his vulnerable immigration clients. He retained for his own use unearned fees in one client matter, amounting to conversion. And he declined to cooperate with disciplinary authorities in their investigation of this matter. Such misconduct calls for disbarment.

V. ORDER

The Court therefore **ORDERS**:

1. **JAMES SPENCER SARPONG**, attorney registration number **38669**, will be **DISBARRED FROM THE PRACTICE OF LAW**. The **DISBARMENT SHALL** take effect only upon issuance of an "Order and Notice of Disbarment."¹⁹
2. To the extent applicable, Respondent **SHALL** promptly comply with C.R.C.P. 251.28(a)-(c), concerning winding up of affairs, notice to parties in pending matters, and notice to parties in litigation.
3. Respondent also **SHALL** file with the Court, within fourteen days of issuance of the "Order and Notice of Disbarment," an affidavit complying with C.R.C.P. 251.28(d), requiring an attorney to file an affidavit with the Court setting forth pending matters and attesting, *inter alia*, to notification of clients and other jurisdictions where the attorney is licensed.
4. The parties **MUST** file any posthearing motion or application for stay pending appeal **on or before Tuesday, March 7, 2017**. Any response thereto **MUST** be filed within seven days.

1044 (Colo. 1999) (disbarring a lawyer who abandoned his client and misappropriated funds); *People v. Kuntz*, 942 P.2d 1206, 1208 (Colo. 1997) (disbarring a lawyer who accepted legal fees from several clients, performed little to no work on their cases, and then abandoned the clients without returning their funds); *People v. Townshend*, 933 P.2d 1327, 1329 (Colo. 1997) (disbarring an attorney who accepted advance fees from two clients, abandoned the clients' matters, and failed to return unearned retainers); *People v. Steinman*, 930 P.2d 596, 599-600 (Colo. 1997) (disbarring a lawyer who accepted fees from clients, abandoned them, and kept their money).

¹⁸ See *Stevenson*, 979 P.2d at 1045.

¹⁹ In general, an order and notice of disbarment will issue thirty-five days after a decision is entered under C.R.C.P. 251.19(b) or (c). In some instances, the order and notice may issue later than thirty-five days by operation of C.R.C.P. 251.27(h), C.R.C.P. 59, or other applicable rules.

5. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a statement of costs **on or before Tuesday, February 28, 2017**. Any response thereto **MUST** be filed within seven days.
6. Respondent shall pay **RESTITUTION** as follows:
 - a. **On or before Tuesday, March 14, 2017**, Respondent **SHALL** pay \$3,030.00 to James Schatzman;
 - b. **On or before Tuesday, March 14, 2017**, Respondent **SHALL** pay \$4,600.00 to Michelle Varela-Pinela; and
 - c. **On or before Tuesday, March 14, 2017**, Respondent **SHALL** pay \$7,400.00 to Andres Alba.

DATED THIS 14th DAY OF FEBRUARY, 2017.

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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