People v. John Lawrence Buckley. 23PDJ009. September 26, 2023.

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred John Lawrence Buckley (attorney registration number 36639). The disbarment takes effect on September 26, 2023.

In 2021, Buckley represented a client charged with driving under the influence. The client paid Buckley a $4,000.00 flat fee in May 2021. The flat-fee agreement included benchmarks for preparing for and representing the client at preliminary hearings and for work performed up to and including sentencing or the case's dismissal. Throughout the case, Buckley failed to respond to the client's reasonable requests for information. He also did not adequately consult with his client about the criminal matter, including the possibility and advisability of entering a guilty plea and participating in a multiple offender program that could lead to a significantly reduced jail sentence. Further, Buckley did not inform his client about the conditions of the client's bond, including the requirement that the client participate in monitored sobriety. In addition, though Buckley's representation included preparing for and attending his client's driver's license revocation hearing before the Department of Motor Vehicles, Buckley failed to request the hearing and failed to notify his client that the client's license had been revoked.

The client terminated the representation before the case concluded. Because Buckley had not completed two benchmarks corresponding to forty-five percent of his client's fee, he knew that he had not earned a portion of his client's fee when the representation ended, and he knew that his client had not authorized him to take or use all of the funds. But Buckley did not refund any money to his client. Instead, Buckley depleted his trust account, knowing that his client's money was in his trust account. During the investigation in this matter, Buckley knew that disciplinary authorities had requested his financial and trust account records, but he did not provide the requested information.

Buckley's conduct violated Colo. RPC 1.2(a) (a lawyer must abide by the client's decisions concerning the objectives of a case and consult with the client regarding the means to achieve the objectives); Colo. RPC 1.3 (a lawyer must act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a)(1)-(4) (a lawyer must promptly inform the client of any decision or circumstance requiring the client's informed consent; reasonably consult with the client about the means to accomplish the client's objectives; keep the client reasonably informed about the status of the client's matter; and promptly comply with reasonable requests for information); Colo. RPC 1.4(b) (a lawyer must explain a matter so as to permit the client to make informed decisions regarding the representation); Colo. RPC 1.15A(a) (a lawyer must hold client property separate from the lawyer's own property); Colo. RPC 1.15D (a lawyer must maintain trust account records); Colo. RPC 1.16(d) (a lawyer must protect a client's interests on termination of the representation, including by returning unearned fees); Colo. RPC 8.1(b) (a lawyer must not knowingly fail to respond to a lawful demand for information from a disciplinary authority); and Colo. RPC 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The case file is public per C.R.C.P. 242.41(a). Please see the full opinion below.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** JOHN LAWRENCE BUCKLEY, #36639	Case Number: **23PDJ009**
OPINION IMPOSING SANCTIONS UNDER C.R.C.P. 242.31(b)	

While representing a client charged with driving under the influence ("DUI"), John Lawrence Buckley ("Respondent") failed to schedule a hearing to challenge the revocation of his client's driver's license. Respondent neither adequately advised the client about the criminal matter nor consulted with the client about the possibility that he could participate in a multiple offender program, which might significantly reduce his jail sentence. During the representation, Respondent did not respond to the client's reasonable requests for information, failed to update the client about proceedings regarding his driver's license, and failed to inform the client about bond conditions in the criminal case. After the client terminated the representation, Respondent did not return the client's unearned fees and failed to keep the client's money in a trust account, for which Respondent did not maintain required financial records. When disciplinary authorities requested information from Respondent regarding this case, he declined to respond to their inquiries. Respondent's misconduct warrants disbarment.

PROCEDURAL HISTORY

On March 9, 2023, Jacob M. Vos of the Office of the Attorney Regulation Counsel ("the People") filed a citation and complaint with Presiding Disciplinary Judge Bryon M. Large ("the Court"). The same day, the People sent the complaint to Respondent at his registered business address, his registered home address, and his business and personal email addresses. The People filed a "Proof of Service of Citation and Complaint" on March 14, 2023. When Respondent did not answer within twenty-eight days, the People moved for entry of default. The Court ordered Respondent to answer the People's complaint and to respond to the motion for default no later than May 19, 2023. Respondent did not respond to the Court's order. Nor did he file an answer or any other responsive pleading.

On May 23, 2023, the Court granted the People's motion for default, deeming all allegations and claims in the complaint admitted. On May 26, 2023, the Court issued a "Notice of Sanctions Hearing Under C.R.C.P. 242.27(c)," advising Respondent of his right to attend the

sanctions hearing, to be represented by counsel at his own expense, to cross-examine witnesses, and to present argument and evidence about the appropriate sanction.

On June 28, 2023, the Court held a sanctions hearing under C.R.C.P. 242.27(b) and C.R.C.P. 242.30. Jonathan P. Blasewitz and Vos appeared on the People's behalf;[1] Respondent did not appear. During the sanctions hearing, the Court heard testimony from John Dye and Karol Dye. The Court admitted into evidence the People's exhibits 1-5 and Respondent's exhibit A.[2]

ESTABLISHED FACTS AND RULE VIOLATIONS

The Court adopts and incorporates by reference the facts of this case, as detailed in the People's complaint. Respondent was admitted to the practice of law in Colorado on October 25, 2005, under attorney registration number 36639. He is thus subject to the jurisdiction of the Colorado Supreme Court and this Court in this disciplinary proceeding.[3]

On April 30, 2021, John Dye was arrested for DUI in Douglas County. On May 4, 2021, Mr. Dye and his spouse, Karol Dye, met with Respondent after Mr. Dye found Respondent's law firm information online. That same day, Mr. Dye and Respondent entered into a flat-fee agreement under which Mr. Dye would pay Respondent $4,000.00 to represent him through pretrial negotiations and in any sentencing hearings in the DUI case. The flat-fee agreement contained the following provisions outlining how Respondent would earn the fee:

> 25% - For work performed up to and including: Filing an entry of appearance and a waiver of arraignment, filing a request for pre-trial conference, filing base discovery motions and an initial conference/consultation with The Client.
>
> 30% - For work performed up to and including: Reviewing discovery and motions, filing any motions prior to the preliminary hearings (specific discovery motions).
>
> 40% - For work performed up to and including: Preparing for the preliminary hearings (Criminal and Administrative), representation at the preliminary hearings (Criminal and Administrative) and engaging in negotiations with the prosecutor.
>
> 5% - For work performed up to and including: Sentencing, dismissal or discharge of the case.

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[1] Blasewitz entered his appearance on June 28, 2023.

[2] The day before the sanctions hearing, Respondent filed a letter on his law office's letterhead containing factual assertions about his representation in Mr. Dye's case and arguing that he had earned Mr. Dye's entire fee. The Court admitted the email as Respondent's exhibit A for the limited purpose of demonstrating that he had notice of the sanctions hearing but made no findings as to the email's contents, as Respondent declined to appear at the sanctions hearing or otherwise support his assertions.

[3] C.R.C.P. 242.1(a)(1).

> 100% of the fee will be earned when you are sentenced or the case is dismissed, regardless of whether your case reaches each of the stages set forth above. For example: If we do not have a [Department of Motor Vehicles ("DMV")] Hearing (Administrative) because the DMV fails to set a hearing or The Client fails to notify us of the hearing date, we still earn the entire fee as stated in this agreement.[4]

Mr. Dye paid Respondent via PayPal on May 4, 2021. Sometime during the following two days Respondent deposited $3,883.70 of Mr. Dye's funds—$4,000.00 minus a processing fee—into his trust account.[5]

During the meeting on May 4, 2021, Respondent explained how he would defend the case and fight the admission of the blood test from the DUI. Respondent told the Dyes that it was imperative they speak to him right away once they received a letter from the DMV so that he could schedule a hearing. The Dyes understood that the DMV hearing was included in the representation.

On May 12, 2021, prosecutors filed a criminal complaint against Mr. Dye in Douglas County Court. Respondent entered his appearance in that case on May 13, 2021. That day, Respondent emailed Mr. Dye and informed him that they would remotely appear in court the following day. Respondent provided Mr. Dye with the call-in information and said that he would do all of the talking during the hearing. Respondent also told Mr. Dye that he planned to get a new court date to give him time to obtain discovery. On May 14, 2021, Respondent and Mr. Dye appeared at the arraignment via Webex. The court continued the matter to July 1, 2021.

Ms. Dye emailed Respondent on June 29, 2021, noting that Respondent had not returned the couple's calls and that the Dyes had not yet received any communication from the DMV. Ms. Dye added that she reviewed Mr. Dye's DMV records, which did not reflect any recent activity. Respondent replied, stating that he received Ms. Dye's phone message late in the day and would call the next day with an update. Mr. Dye texted Respondent the next day and asked about the upcoming court hearing. Respondent confirmed the court date and replied that Mr. Dye need do nothing because the district attorney's office had not yet provided the blood test results. He added, "The fact that we don't have the test results is likely why you have not heard anything from the DMV."[6] On July 1, 2021, Respondent and Mr. Dye appeared at the virtual criminal hearing. Respondent asked the court to continue the matter, which the court reset to August 2, 2021.

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[4] Compl. ¶ 5; *see also* Ex. 1 at 1.

[5] During that time, Respondent deposited two payments of $3,883.70 from PayPal into his trust account—one on May 5, 2021, and another on May 6, 2021. Respondent did not comply with the People's request to produce bookkeeping records showing when he received or removed funds for specific clients from his trust account.

[6] *See* Compl. ¶ 20.

In late July 2021, Mr. Dye texted Respondent that he had not received details about the upcoming hearing. Respondent replied two days later, stating that he was in court and would get the information to Mr. Dye shortly. Mr. Dye then complained to Respondent that Respondent's "communication was not that great"[7] and asked what he was paying for. That evening, Respondent sent Mr. Dye the call-in information for the court date. On August 2, 2021, Respondent and Mr. Dye attended the criminal hearing via Webex. Respondent requested another continuance, and the court reset the matter to September 3, 2021.

On August 9, 2021, Ms. Dye received a letter from the DMV. She emailed a copy to Respondent the same day. The DMV's letter advised that it was revoking Mr. Dye's driver's license because his positive chemical test reflected that he illegally drove a motor vehicle while under the influence of alcohol. The letter also stated that Mr. Dye could request a hearing on the matter and that the deadline to do so was August 23, 2021. On August 10, 2021, Mr. Dye asked Respondent if he had received any communications from the DMV.

On August 11, 2021, Ms. Dye emailed Respondent advising him that Mr. Dye was in the intensive care unit ("ICU") and that she was uncertain of the next court date. Respondent replied with his sympathies and told her the next appearance was September 3, 2021. He also asked about Mr. Dye's condition. On August 12, 2021, Respondent asked Ms. Dye for an update about her husband. Ms. Dye responded that she would call Respondent sometime in the following few days.

Ms. Dye emailed Respondent on August 15, 2021, asking whether he received the DMV paperwork she had sent to him earlier. She also informed Respondent that Mr. Dye was still in the ICU. Respondent replied that he had not received the paperwork and asked Ms. Dye to send him a copy along with any information she provided to the DMV. That day, Ms. Dye sent Respondent an email with a copy of the DMV document that she had received on August 14, 2021. She told Respondent that neither she nor Mr. Dye had communicated with the DMV.

On August 18, 2021, Ms. Dye advised Respondent that her husband was out of the ICU but remained hospitalized. Respondent thanked Ms. Dye for the update and asked her to notify him of any changes. Respondent also mentioned that "they would see how things stood" as the court date got closer,[8] adding that the judge would not be upset that Mr. Dye was in the hospital and that the district attorney still had not provided Respondent with the investigatory materials he needed.

Ms. Dye asked Respondent on August 19, 2021, whether the DMV would hold a hearing. The next day, she advised Respondent that Mr. Dye had returned home and required outpatient therapy. She asked Respondent again for an update on the DMV hearing. Respondent replied that he requested a hearing with the DMV and would call Mr. Dye the next week to discuss the

[7] *See* Compl. ¶ 23.
[8] Compl. ¶ 34.

matter. But neither Respondent nor Mr. Dye requested a hearing by the deadline of August 23, 2021.

On August 24, 2021, Ms. Dye asked Respondent to contact Mr. Dye at another number due to issues with Mr. Dye's phone. On September 3, 2021, Respondent and Mr. Dye appeared via Webex at the criminal hearing. Respondent asked the court to continue the hearing, which the court reset to October 18, 2021.

On October 18, 2021, Respondent and Mr. Dye attended the criminal hearing in person. Mr. Dye entered a plea of not guilty. The court set the trial for April 16, 2022, and the trial call for January 28, 2022. After Mr. Dye returned from the hearing, he discussed the plea agreement with Ms. Dye. They agreed that Mr. Dye was culpable and decided that he should plead guilty. Though Respondent also wanted Mr. Dye to plead guilty, he did not raise the option of a guilty plea with his client or discuss the possibility that Mr. Dye could participate in Douglas County's multiple offender program, which might significantly reduce Mr. Dye's jail sentence.

On November 16, 2021, Mr. Dye texted Respondent and inquired about the next court date. Mr. Dye then thrice attempted to reach Respondent by phone, after which Respondent simply texted, "Jan 28." On November 25, 2021, Mr. Dye checked the status of his driver's license and discovered that it had been revoked the previous month. On November 26, 2021, Mr. Dye replied to Respondent's text of November 16 and complained that Respondent had been "[no] help at all."[9] Mr. Dye informed Respondent that he wanted to change his plea to guilty to "get this over with,"[10] and he asserted that Respondent had lied about securing him a temporary driver's license.

On November 29, 2021, Mr. Dye terminated Respondent's representation by letter and requested his file and a fee accounting. The next day, Mr. Dye learned from his new lawyer, Michael Kossen,[11] that his bond and summons in the criminal case required that he submit to monitored sobriety. Respondent had not discussed the requirement with Mr. Dye.

Respondent did not earn all of Mr. Dye's fees because he did not prepare for any hearing, represent Mr. Dye in any court proceeding other than in the arraignment, or resolve the case. Because Respondent did not reach the third or fourth benchmarks in his fee agreement, he should have held at least $1,800.00 of Mr. Dye's fee in his trust account. But by May 24, 2021, the balance in Respondent's trust account dipped to $1,776.27. On February 25, 2022, Respondent made a $25.00 payment to Starbucks drawn on the trust account. The trust account held insufficient funds, however, resulting in a negative balance. By that time, Respondent no longer held any of Mr. Dye's money in trust.

[9] Compl. ¶ 47; *see also* Ex. 2 at 6.

[10] Compl. ¶ 47; *see also* Ex. 2 at 6.

[11] Kossen entered as substitute counsel in the criminal proceeding on December 1, 2021.

The People attempted to contact Respondent multiple times about their investigation in this matter and repeatedly requested information from him. Respondent has not replied since April 18, 2022, when he emailed, "This was a simple banking error. I immediately corrected the problem, transferred funds back to the account, and ensured that it would not happen again."[12] Respondent did not produce the requested records, however, nor did he respond to the People's other requests for information.[13]

During his representation in Mr. Dye's case, Respondent violated seven Colorado Rules of Professional Conduct:

- Respondent violated Colo. RPC 1.2(a), which requires a lawyer to abide by the client's decisions concerning the objectives of a case and to consult with the client regarding the means to achieve the client's objectives. Respondent did not consult with Mr. Dye about the possibility and advisability of entering a guilty plea and participating in Douglas County's multiple offender program.

- Respondent violated Colo. RPC 1.3, which requires that a lawyer act with reasonable diligence and promptness when representing a client. Respondent violated this rule when he did not diligently represent Mr. Dye in the DMV proceeding, including by failing to request a hearing to contest the DMV's decision to revoke Mr. Dye's driver's license.

- Respondent violated Colo. RPC 1.4(a)(1)-(4), which require that a lawyer promptly inform the client of any decision or circumstance requiring the client's informed consent; reasonably consult with the client about the means to accomplish the client's objectives; keep the client reasonably informed about the status of the client's matter; and promptly comply with reasonable requests for information. Respondent contravened these rules when he failed to respond to the Dyes' requests for information; failed to update Mr. Dye about the DMV proceeding; and failed to inform Mr. Dye of the conditions of his bond.

  In addition, by failing to counsel Mr. Dye about his options in the criminal case and about the potential benefits of a guilty plea, Respondent limited his client's capacity to make informed decisions about his plea. Respondent thus violated Colo. RPC 1.4(b), which requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

- Respondent violated Colo. RPC 1.15A(a), which requires that a lawyer hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Respondent violated this rule by failing to hold Mr. Dye's unearned fees in trust.

[12] Compl. ¶ 58; *see also* Ex. 4 at 1.

[13] In their complaint, the People note that Respondent contacted them after April 2022 about an unrelated matter.

- Respondent violated Colo. RPC 1.15D, which requires that a lawyer "maintain in a current status and retain for seven years certain financial records," including records of funds held in trust accounts or any other accounts in which client funds are kept, along with records of disbursing those funds. Respondent failed to maintain appropriate financial records of the Dyes' funds and disbursements from his trust account.

- Respondent violated Colo. RPC 1.16(d), which requires that a lawyer must protect a client's interests upon termination of the representation, including by returning unearned fees. Respondent violated this rule when he failed to refund to Mr. Dye the $1,800.00 that he had not earned when the representation ended.

- Respondent violated Colo. RPC 8.4(c), which establishes that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. A lawyer's knowing conversion of funds violates Colo. RPC 8.4(c).[14] Knowing conversion occurs when a lawyer takes money that has been entrusted to the lawyer by another person, knowing that the money belongs to another person, and knowing that the lawyer has not been authorized to use the money.[15]

  The facts established on default show that Respondent knew that he had not earned $1,800.00 of Mr. Dye's fee when the representation ended. He knew that he was not authorized to take or use the funds for his own purposes and that he needed to refund the money to Mr. Dye. Even so, Respondent depleted his trust account, which he knew held Mr. Dye's money. Respondent thus knowingly converted Mr. Dye's funds, violating Colo. RPC 8.4(c).

Finally, though Respondent communicated with the People during their investigation in this matter and knew they had requested information, he did not provide the records they sought. He thus violated Colo. RPC 8.1(b), which provides that a lawyer must not knowingly fail to respond to a lawful demand for information from disciplinary authorities.

SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[16] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[17] When deciding on a sanction after finding lawyer misconduct, the Court must consider the duty the lawyer violated, the lawyer's mental state, and the actual or potential injury the lawyer's misconduct caused. These three variables yield a presumptive sanction that the Court may then adjust based on aggravating and mitigating factors.

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[14] *See In re Kleinsmith*, 2017 CO 101, ¶ 13.
[15] *Kleinsmith*, ¶ 14 (citing *People v. Varallo*, 913 P.2d 1, 10-11 (Colo. 1996)).
[16] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).
[17] *See In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).

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

Duty: Respondent violated duties to his client when he failed to consult with Mr. Dye about Mr. Dye's legal options and objectives for the representation; failed to diligently represent Mr. Dye in the DMV proceeding; failed to adequately communicate with Mr. Dye about the criminal and DMV matters; failed to safeguard Mr. Dye's funds; and failed to return Mr. Dye's unearned fees. Respondent violated his duties as a professional by failing to maintain required financial records and by declining to respond to the People's requests for information.

Mental State: The rule violations established on default show that Respondent knowingly converted Mr. Dye's $1,800.00 in violation of Colo. RPC 8.4(c) and knowingly failed to respond to the People's requests for information, violating Colo. RPC 8.1(b). The established rule violations also show that Respondent acted knowingly when he violated Colo. RPC 1.16(d) by failing to refund Mr. Dye's unearned fees; when he violated Colo. RPC 1.3 by failing to diligently represent Mr. Dye in the DMV process; and when he violated Colo. RPC 1.4(3)-(4) by failing to respond to the Dyes' requests for information and by failing to keep Mr. Dye informed about the status of his case.[18]

The facts established on default also show that Respondent knew he did not reach the third and fourth benchmarks in the fee agreement and thus did not earn $1,800.00 of Mr. Dye's fee; even so, he depleted and overdrew his trust account in which he should have been holding Mr. Dye's money. The Court thus finds that Respondent acted knowingly when he failed to safeguard his client's funds in violation of Colo. RPC 1.15A(a). In addition, because Respondent was aware of his own record-keeping practice,[19] the Court finds that he knowingly failed to maintain financial records as required under Colo. RPC 1.15D. Moreover, his limited communications with the People show that he acknowledged his failure to appropriately manage his trust account.[20]

Finally, the Court finds that Respondent acted at least recklessly when he violated Colo. RPC 1.2(a) by failing to consult with Mr. Dye about the advisability of a guilty plea and about Mr. Dye's potential eligibility for the multiple offender program, and when he violated Colo. RPC 1.4(b) by failing to counsel Mr. Dye about his plea.[21] Respondent also, at a minimum, recklessly violated Colo. RPC 1.4(a)(1)(3) when he failed to inform Mr. Dye of the bond

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[18] *See also* Exs. 2-3.

[19] *See* ABA *Annotated Standard* 4.32 at 187 ("A lawyer need not necessarily be aware that his or her conduct violates a disciplinary rule, as long as he or she knows the essential facts giving rise to a violation."); *see also In re Attorney C.*, 47 P.3d 1167, 1173 n.12 (Colo. 2002) (noting that lawyers in Colorado are presumed to be aware of their duties under the Rules of Professional Conduct).

[20] Ex. 4 at 1.

[21] *See People v. Rader*, 822 P.2d 950, 953 (Colo. 1992) (lawyers act recklessly by deliberately closing their eyes to facts they have a duty to see).

conditions and failed to update Mr. Dye on the DMV matter, including by failing to inform Mr. Dye about the revoked driver's license.

Injury: Respondent financially injured Mr. Dye by misappropriating Mr. Dye's $1,800.00. At the sanctions hearing, the Dyes each testified that paying Respondent's fee and hiring Kossen for $3,500.00 to finish the representation strained their family's finances. The Dyes also testified that their attempts to obtain information about the case from Respondent cost them time and effort and caused them emotional distress. In addition, Respondent's failure to produce records in this case hampered the People's investigation, as it interfered with their ability to trace Mr. Dye's money and to exercise oversight of Respondent's trust account management. The Court also finds that Respondent caused some harm to the reputation of the legal profession, as the Dyes testified that they are slow to trust lawyers because of their experience with Respondent. The Court notes, however, the Dyes' favorable statements that Kossen improved their tarnished impression of lawyers.

Respondent's conduct also created serious potential injury. Because Respondent did not inform Mr. Dye that he was required to submit to monitored sobriety, Mr. Dye unknowingly failed to comply with a condition of his bond. Respondent thus exposed his client to potential legal action. Respondent placed Mr. Dye at legal risk a second time by failing to inform him that the DMV had revoked his driver's license. As a result, Mr. Dye unknowingly drove for over a month without a valid license. And by failing to request the DMV hearing, Respondent foreclosed Mr. Dye's opportunity to contest the revocation of his driver's license. Finally, Respondent's failure to advise Mr. Dye that he could be eligible for the multiple offender program created serious potential harm for Mr. Dye, who testified that he would have faced significantly more jail time had he not learned of the program from Kossen.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

Under ABA *Standard* 4.11, disbarment is generally appropriate when a lawyer knowingly converts client property, thereby causing a client injury or potential injury. Likewise, disbarment is presumed under ABA *Standard* 4.41(b) when a lawyer knowingly fails to perform services for a client and causes the client serious or potentially serious injury.[22]

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating factors include any considerations that justify an increase in the degree of the sanction to be imposed, while mitigating factors warrant a reduction in the severity of the

[22] The People ask the Court to apply ABA *Standard* 4.41(a), which calls for disbarment when a lawyer abandons the practice of law, resulting in serious or potentially serious client injury. But the People did not introduce evidence showing that Respondent abandoned his practice during Mr. Dye's representation, so the Court finds that ABA *Standard* 4.41(a) does not fit the established facts in this case.

sanction.[23] At the sanctions hearing, the People advanced for the Court's consideration nine aggravating factors. The Court finds seven present here:[24] prior disciplinary offenses,[25] dishonest or selfish motive,[26] a pattern of misconduct,[27] multiple offenses,[28] vulnerability of the victim,[29] substantial experience in practice of law,[30] and indifference to making restitution.[31] The Court applies one mitigating factor, acknowledging the remoteness of Respondent's prior discipline.[32]

Analysis Under ABA *Standards* and Case Law

The Court heeds the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[33] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[34] Though prior cases can inform through analogy, the Court is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.[35]

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[23] *See* ABA *Standards* 9.21 and 9.31.

[24] The Court refuses to apply two aggravating factors that the People seek: bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (ABA *Standard* 9.22(e)); and refusal to acknowledge wrongful nature of conduct (ABA *Standard* 9.22(g)). The Court finds that the People did not show that Respondent intentionally, rather than merely knowingly, failed to comply with disciplinary rules or orders. In addition, the Court declines to conclude that Respondent's refusal to participate in the disciplinary proceeding, standing alone, constitutes a refusal to acknowledge the wrongful nature of his conduct.

[25] ABA *Standard* 9.22(a). Respondent was privately admonished in 2009 for not diligently representing or communicating with clients as well as for failing to cooperate with disciplinary authorities. See Ex. 5.

[26] ABA *Standard* 9.22(b). By keeping unearned funds, Respondent acted with a selfish motive.

[27] ABA *Standard* 9.22(c). Throughout the six-month representation, Respondent failed to confer with Mr. Dye, diligently represent Mr. Dye, and respond to the Dyes' communications as to both the criminal case and the DMV proceeding. Respondent also mishandled his client's funds during and after the representation.

[28] ABA *Standard* 9.22(d). Respondent's misconduct includes failures to consult with, communicate with, and diligently act on behalf of his client; safeguard his client's property and protect his client's interests; and respond to the People's requests for information.

[29] ABA *Standard* 9.22(h). Mr. Dye was in the ICU during a critical period of time when he relied on Respondent to request a hearing contesting the DMV's revocation of his driver's license.

[30] ABA *Standard* 9.22(i). Respondent was admitted to the practice of law in Colorado in 2005.

[31] ABA *Standard* 9.22(j). Respondent has not refunded any of Mr. Dye's fee.

[32] ABA *Standard* 9.32(m). Respondent's prior discipline occurred in 2009. *See* Ex. 5.

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

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

[35] *Id.* ¶ 15.

Like the ABA *Standards*, Colorado Supreme Court case law calls for disbarment when a lawyer knowingly converts client property and thus injures the client. Knowing misappropriation of client funds almost always warrants disbarment unless extraordinary mitigating factors apply.[36] Here, the facts established on default point to disbarment because they show that under the fee agreement Respondent failed to earn $1,800.00 that Mr. Dye gave him; that Respondent depleted his trust account when he should have held in that account Mr. Dye's unearned funds; and that Respondent never refunded any money to Mr. Dye. In addition, the seven aggravating factors in this case are only nominally offset by a single mitigating factor, reinforcing the presumption of disbarment here. This analysis, moreover, does not even account for Respondent's knowing failure to act diligently on his client's behalf, seriously imperiling Mr. Dye's rights and placing him in legal jeopardy. Respondent's misconduct aligns this matter with other cases in which the Colorado Supreme Court disbarred lawyers who knowingly fail to perform services for clients and seriously or potentially seriously injure the clients.[37]

Finally, because Respondent did not earn $1,800.00 of Mr. Dye's fee and failed to return the unearned money to his client, the Court finds that Mr. Dye is entitled to restitution from Respondent in the amount of $1,800.00.

CONCLUSION

Respondent contravened duties that are fundamental to the lawyer-client relationship. He failed to communicate with and counsel his client about the client's DUI case. Rather than protect his client's interests when the client terminated the representation, Respondent kept the client's unearned fees. Respondent violated his obligation to the legal profession by failing to maintain required financial records and by not participating in the People's investigation. But it is Respondent's knowing failure to diligently act on his client's behalf and his knowing misuse of his client's funds that conclusively show that he is unfit to represent clients. Respondent's misconduct, which is exacerbated by seven aggravating factors, warrants disbarment.

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[36] *See Varallo*, 913 P.2d at 10-11 (concluding that a lawyer's absence of prior discipline and evidence of his good character did not overcome the presumption of disbarment for the lawyer's knowing use of his client's funds for his personal benefit); *see also People v. Lavenhar*, 934 P.2d 1355, 1359 (Colo. 1997) (finding that a lawyer's misconduct, including knowingly misappropriating third-party funds, which was exacerbated by seven aggravating factors, warranted disbarment).

[37] *See People v. Southern*, 832 P.2d 946, 947-48 (Colo. 1992) (disbarring a lawyer after the lawyer failed to appear or diligently represent clients in multiple matters, causing the clients serious and potentially serious injury); *People v. Quintana*, 752 P.2d 1059, 1062 (Colo. 1988) (disbarring a lawyer after the lawyer failed to file written findings on behalf of a client, resulting in the loss of the client's child support benefits for one year; failed to pursue nonsupport proceedings on behalf of another client; failed to return the clients' unearned funds; and misappropriated funds belonging to a third client).

ORDER

The Court **ORDERS:**

1. **JOHN LAWRENCE BUCKLEY** is **DISBARRED** from the practice of law in Colorado. The disbarment will take effect upon issuance of an "Order and Notice of Disbarment."[38]

2. To the extent applicable, Respondent **MUST** promptly comply with C.R.C.P. 242.32(b)-(e), concerning winding up of affairs, notice to current clients, duties owed in litigation matters, and notice to other jurisdictions where he is licensed or otherwise authorized to practice law.

3. Within fourteen days of issuance of the "Order and Notice of Disbarment," Respondent **MUST** file an affidavit with the Court under C.R.C.P. 242.32(f), attesting to his compliance with C.R.C.P. 242.32. As provided in C.R.C.P. 242.41(b)(5), lists of pending matters, lists of clients, and copies of client notices under C.R.C.P. 242.32(f) must be marked as confidential attachments and filed as separate documents from the affidavit.

4. The parties **MUST** file any posthearing motions **no later than Tuesday, September 5, 2023**. Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **no later than the date on which the notice of appeal is due**. Any response thereto **MUST** be filed within seven days.

6. Respondent **MUST** pay the costs of this proceeding. The People **MUST** submit a statement of costs **no later than Tuesday, August 29, 2023**. Any response challenging the reasonableness of those costs **MUST** be filed within seven days thereafter.

7. Respondent **MUST** pay restitution in the amount of $1,800.00 to John Dye **no later than Tuesday, September 26, 2023**. Alternatively, if John Dye receives payment under a claim submitted to the Attorneys' Fund for Client Protection, Respondent **MUST** reimburse the Fund **no later than Tuesday, September 26, 2023**.

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[38] In general, an order and notice of sanction will issue thirty-five days after a decision is entered under C.R.C.P. 242.31(a)(6). In some instances, the order and notice may issue later than the thirty-five days by operation of C.R.C.P. 242.35, C.R.C.P. 59, or other applicable rules.

DATED THIS 22nd DAY OF AUGUST, 2023.

BRYON M. LARGE
PRESIDING DISCIPLINARY JUDGE