

**People v. Kevin D. Heupel. 17PDJ005. July 11, 2017.**

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Kevin D. Heupel (attorney registration number 30264), effective August 15, 2017.

Heupel, a bankruptcy and immigration lawyer, was suspended from the practice of law for one year and one day in early 2016. Heupel then neglected to notify clients of his suspension, failed to protect their interests after his suspension took effect, and continued to practice law in defiance of the suspension order. Apart from misconduct involving the suspension, he also failed to work diligently on his clients' cases, charged unreasonable fees, improperly reduced his fees in exchange for positive internet reviews, and knowingly converted client funds, among other things. When disciplinary authorities investigated his conduct, he refused to cooperate and later defaulted in this proceeding. Heupel violated seventeen ethical rules in seventeen separate client matters.

Specifically, Heupel violated the following rules: Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a)(3) (a lawyer shall keep a client reasonably informed about the status of the matter); Colo. RPC 1.4(a)(4) (a lawyer shall promptly comply with reasonable requests for information); Colo. RPC 1.4(b) (a lawyer shall explain a matter so as to permit the client to make informed decisions regarding the representation); Colo. RPC 1.5(a) (a lawyer shall not charge an unreasonable fee or an unreasonable amount for expenses); Colo. RPC 1.5(b) (a lawyer shall inform a client in writing about the lawyer's fees and expenses within a reasonable time after being retained, if the lawyer has not regularly represented the client); Colo. RPC 1.5(f) (a lawyer does not earn fees until a benefit is conferred on the client or the lawyer performs a legal service); Colo. RPC 1.15A(a) (a lawyer shall hold client property separate from the lawyer's own property); Colo. RPC 1.15D (a lawyer shall maintain trust account records); Colo. RPC 1.16(d) (a lawyer shall protect a client's interests upon termination of the representation, including by giving reasonable notice to the client and returning unearned fees and any papers and property to which the client is entitled); Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); Colo. RPC 5.5(a)(1) (a lawyer shall not practice law without a law license or other specific authorization); Colo. RPC 5.5(a)(3) (a lawyer shall not assist a person in the performance of the unauthorized practice of law); Colo. RPC 7.1(a) (a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services); Colo. RPC 7.2(b) (a lawyer shall not, with some exceptions, give anything of value to a person for recommending the lawyer's services); Colo. RPC 8.1(b) (a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority); and Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Please see the full opinion below.

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203</p>	
<p><b>Complainant:</b> THE PEOPLE OF THE STATE OF COLORADO</p> <p><b>Respondent:</b> KEVIN D. HEUPEL</p>	<p>Case Number: <b>17PDJ005</b></p>
<p><b>OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)</b></p>	

In early 2016, Kevin D. Heupel (“Respondent”) was suspended from the practice law in a separate disciplinary case. Respondent then neglected to notify clients of his suspension, failed to protect their interests after his suspension took effect, and continued to practice law in defiance of the suspension order. Apart from misconduct involving the suspension, he also failed to work diligently on his clients’ cases, charged unreasonable fees, improperly reduced his fees in exchange for positive internet reviews, and knowingly converted client funds, among other things. When disciplinary authorities investigated his conduct, he refused to cooperate and he later defaulted in this proceeding. Respondent violated seventeen separate ethical rules: Colo. RPC 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(b), 1.5(a), 1.5(b), 1.5(f), 1.15A(a), 1.15D, 1.16(d), 3.4(c), 5.5(a)(1), 5.5(a)(3), 7.1(a), 7.2(b), 8.1(b), and 8.4(c). Without question, this misconduct calls for disbarment.

### **I. PROCEDURAL HISTORY**

On February 3, 2017, Jacob M. Vos, Office of Attorney Regulation Counsel (“the People”), filed a complaint with Presiding Disciplinary Judge William R. Lucero (the “Court”). The People sent Respondent copies of the complaint the same day to his registered business address and two other last-known addresses. He failed to answer, and the Court granted the People’s motion for default on April 4, 2017. Upon the entry of default, the Court deemed all facts set forth in the complaint admitted and all rule violations established by clear and convincing evidence.<sup>1</sup>

On June 12, 2017, the Court held a sanctions hearing under C.R.C.P. 251.15(b). Vos represented the People; Respondent did not appear. The People’s exhibits 1-8 were admitted into evidence.

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<sup>1</sup> See C.R.C.P. 251.15(b); *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

## II. ESTABLISHED FACTS AND RULE VIOLATIONS

The Court adopts and incorporates by reference the averments in the admitted complaint, as summarized below. Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on November 3, 1998, under attorney registration number 30264. He is thus subject to the Court's jurisdiction in this disciplinary proceeding.<sup>2</sup>

By opinion dated January 24, 2016, Respondent was suspended from the practice of law for one year and one day in case number 15PDJ032. The suspension took effect February 28, 2016. At the time he was suspended, Respondent operated Heupel Law, a firm with an immigration practice and a high-volume bankruptcy practice. The order of suspension required Respondent to comply with C.R.C.P. 251.28(a)-(c). These rules prohibit a lawyer from accepting new employment after a suspension order is issued; require a lawyer to notify clients of a suspension and to return client papers and property; and direct a lawyer to notify parties in litigation of a suspension.

During the period both before and after his suspension, Respondent violated seventeen Rules of Professional Conduct in seventeen separate client representations. As a broader matter, he also violated record-keeping rules and failed to hold unearned funds in trust. During the pending disciplinary proceeding, he spurned the People's supplemental investigatory requests, refused to participate in clearing a date for his deposition, and evaded service of his deposition subpoena. Because of the extensive nature of Respondent's client-related misconduct, the Court provides a highly abbreviated summary of the misconduct in each client matter here.<sup>3</sup> Further details can be found in the admitted complaint.

- Kendall Maccagnan and Luis Vazquez matter: Respondent accepted this immigration matter after suspension of his law license had been ordered. He did not inform the clients of his suspension. He also failed to file for an adjustment of status, as he had promised to do. He knowingly converted his clients' funds.
- Kendra Chaves matter: Chaves hired Respondent in 2013 to file a Chapter 7 bankruptcy petition on her behalf. She paid Respondent's \$2,000.00 flat fee by March 2014, but Respondent never filed the petition. He also failed to inform her of his suspension. Respondent's partial refund check issued to Chaves was returned due to insufficient funds. On his billing statement, he included charges for an initial consultation and a retaining appointment, even though he had advertised those meetings as free. Respondent's handling of this client's funds amounted to knowing conversion.

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<sup>2</sup> See C.R.C.P. 251.1(b).

<sup>3</sup> In almost each case, Respondent committed additional types of misconduct that are not mentioned here. The seventeen "client matters" listed here are referred to by the name used for each matter in the People's complaint.

- Heather Grimes matter: Respondent offered Grimes a discount on his legal fees conditioned on her writing positive internet reviews about his law firm. Respondent never filed the Chapter 7 bankruptcy petition that Grimes hired him to file, and he neglected to inform her of his suspension. In addition, he knowingly converted her funds.
- Renterra Fauth matter: Respondent never filed the bankruptcy petition that Fauth hired him to file, nor did he advise her of his suspension. He then disregarded successor counsel's requests for a refund. He never refunded client funds, and his billing statement reflected charges for an initial consultation that was supposed to be free. He knowingly converted unearned fees from the client.
- Melanie Siders/USCIS matter:<sup>4</sup> Respondent sent twelve applications or submissions to the U.S. Citizenship and Immigration Services ("USCIS") between February 29, 2016, and April 26, 2016. After his suspension took effect, Respondent appeared for several USCIS interviews on behalf of applicants without disclosing his suspension to USCIS. In addition, Respondent aided a nonlawyer, Cynthia Herrera, a/ka Cynthia Yesenia Rubi, in the unauthorized practice of law in USCIS matters.
- Kelly Stroh matter: Stroh retained Respondent in 2013 to file a Chapter 7 bankruptcy petition and paid Respondent's flat fee. Respondent never filed the petition, nor did he inform Stroh of his suspension.
- Mayra Soto and Gerardo Sanchez Tellez matter: These clients retained Respondent to file an I-130 petition and an I-601 waiver application. Respondent submitted the I-130 petition to USCIS but did not file the I-160 application before his suspension took effect. His fee agreement with these clients improperly provided that his fees were earned upon receipt.
- Shane Sisis matter: Respondent was hired in late 2015 to file a Chapter 7 bankruptcy petition for this client, but he never filed the petition, nor did he inform the client of his suspension. Respondent later failed to return the client's unearned fees and his file.
- Arlyn Peters matter: Peters hired Respondent to file a Chapter 13 bankruptcy petition. Respondent never informed Peters that his license had been suspended, and he failed to return his client's documents, including medical information.
- Glenda York matter: York and her husband hired Respondent in 2012 to file a Chapter 7 bankruptcy petition. Respondent did not tell York when his license was suspended, and he disregarded successor counsel's request to return the case file.

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<sup>4</sup> For simplicity's sake, the Court refers to the Melanie Siders/USCIS matter as a single representation, but the Court recognizes that the matter involved a number of separate clients.

- Terry Owens matter: Respondent represented this client in a bankruptcy matter. The client only learned of Respondent's suspension from a court notice, and the client then had to file his own bankruptcy-related documentation.
- Brian Webber matter: Respondent failed to diligently work on this client's bankruptcy case. Because of his lack of progress and the benchmarks in his fee agreement, his fee was unreasonable. Respondent also failed to notify the client of his suspension and to thereafter protect his client's interests.
- Pamela and Kenneth Martin matter: Respondent agreed to represent these repeat clients in a new matter on January 29, 2016, a month before his suspension was to take effect, in violation of C.R.C.P. 251.28. He did not tell his clients about his imminent suspension. His fee was unreasonable because of his lack of progress on the case.
- Jules Ilunga matter: Ilunga retained Respondent in a Chapter 13 bankruptcy matter. Respondent gave Ilunga a credit for legal fees in exchange for writing a good review of Heupel Law on Google. Respondent charged Ilunga for an initial consultation that he had advertised as free. Respondent also failed to return Ilunga's calls regarding case-related questions.
- Kevin Schwarz matter: Respondent failed to diligently work on this bankruptcy matter. He also failed to notify his client of his suspension and to thereafter protect his client's interests.
- Aaron McIntire matter: Respondent did not diligently handle this bankruptcy case. He also failed to take appropriate steps to notify and protect his client when his law license was suspended.
- Nathaniel Hicks matter: In this bankruptcy matter, Respondent charged a fee that was unreasonable in light of his lack of progress. He also failed to inform his client of his suspension and to return unearned funds.

In these matters, Respondent transgressed the following Rules of Professional Conduct: Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a)(3) (a lawyer shall keep a client reasonably informed about the status of the matter); Colo. RPC 1.4(a)(4) (a lawyer shall promptly comply with reasonable requests for information); Colo. RPC 1.4(b) (a lawyer shall explain a matter so as to permit the client to make informed decisions regarding the representation); Colo. RPC 1.5(a) (prohibiting a lawyer from charging an unreasonable fee or an unreasonable amount for expenses); Colo. RPC 1.5(b) (a lawyer shall inform a client in writing about the lawyer's fees and expenses within a reasonable time after being retained, if the lawyer has not regularly represented the client); Colo. RPC 1.5(f) (a lawyer does not earn fees until a benefit is conferred on the client or the lawyer performs a legal service); Colo. RPC 1.15A(a) (a lawyer shall hold client property separate from the lawyer's own property); Colo. RPC 1.15D (a lawyer shall maintain trust account records); Colo. RPC 1.16(d) (a lawyer shall

protect a client's interests upon termination of the representation, including by giving reasonable notice to the client and returning unearned fees and any papers and property to which the client is entitled); Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); Colo. RPC 5.5(a)(1) (a lawyer shall not practice law without a law license or other specific authorization); Colo. RPC 5.5(a)(3) (a lawyer shall not assist a person in the performance of the unauthorized practice of law); Colo. RPC 7.1(a) (a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services); Colo. RPC 7.2(b) (a lawyer shall not, with some exceptions, give anything of value to a person for recommending the lawyer's services); Colo. RPC 8.1(b) (a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority); and Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

### III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA Standards")<sup>5</sup> and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.<sup>6</sup> 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: This case reflects an abdication of Respondent's duties to his clients, the legal system, and the legal profession.

Mental State: The Court's order entering default establishes that Respondent knowingly violated Colo. RPC 3.4(c) and 8.1(b). The evidence strongly suggests that Respondent knowingly committed the other misconduct at issue in this case.

Injury: Respondent's pattern of misconduct caused wide-ranging harm, the severity of which cannot be adequately conveyed in the synopsis here. He dispossessed clients—including bankruptcy clients who struggling financially—of money that belonged to them. He charged inappropriate fees, causing an appearance of impropriety and tarnishing the image of the legal profession. He did not diligently work on his clients' cases, depriving his clients of the opportunity to seek legal relief. He failed to notify clients of his suspension, further depriving them of a fair opportunity to timely pursue relief.<sup>7</sup> His violation of the suspension order undermined the authority of this Court, the Colorado Supreme Court, and

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<sup>5</sup> Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).

<sup>6</sup> See *In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).

<sup>7</sup> See Ex. 1 (letter from Melanie J. Siders and Catherine M. O'Connell, USCIS, to the People dated May 24, 2017, describing how Respondent denied his clients the opportunity to obtain competent representation in pursuit of benefits before USCIS).

the Colorado Rules of Civil Procedure. And his failure to report his suspension to USCIS caused that agency to expend valuable resources to address his misconduct.<sup>8</sup>

### **ABA Standards 4.0-7.0 – Presumptive Sanction**

Disbarment is the presumptive sanction in this case under at least two ABA Standards: ABA Standard 4.11 calls for disbarment where a lawyer knowingly converts client property, thereby causing a client injury or potential injury, and ABA Standard 8.1(a) states that disbarment is typically warranted when a lawyer knowingly violates the terms of a prior disciplinary order, causing injury or potential injury to a client, the legal system, the public, or the profession.

### **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.<sup>9</sup> Six aggravating factors are present here: Respondent acted with a dishonest or selfish motive, he engaged in a pattern of misconduct, he committed a variety of offenses, he has refused to acknowledge the wrongful nature of his misconduct, he has substantial experience in the practice of law, and he has demonstrated indifference to making restitution in several of the client matters.<sup>10</sup> The Court is aware of no mitigating factors.

### **Analysis Under ABA Standards and Colorado Case Law**

The Court recognizes the Colorado Supreme Court’s directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,<sup>11</sup> mindful that “individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases.”<sup>12</sup> 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 determined that knowing conversion of funds from clients or other persons warrants disbarment except where substantial mitigating factors are present.<sup>13</sup> Here, the presumptive standards, the overwhelming predominance of

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<sup>8</sup> See Ex. 1.

<sup>9</sup> See ABA Standards 9.21 & 9.31.

<sup>10</sup> ABA Standards 9.22(b)-(d), (g), and (i)-(j). Although the People also request application of ABA Standard 9.22(e)—bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency—the Court finds that Respondent’s failure to participate in this proceeding and his noncooperation with the People are addressed by the Colo. RPC 8.1(b) charge.

<sup>11</sup> 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).

<sup>12</sup> *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

<sup>13</sup> See, e.g., *People v. Lavenhar*, 934 P.2d 1355, 1358-59 (Colo. 1997) (imposing disbarment for multiple instances of misconduct, the most serious of which was knowing conversion of third-party funds, and stating that “[w]e

aggravating factors, and Colorado case law all point to disbarment as the only fitting sanction.

#### IV. CONCLUSION

In the seventeen matters underlying this disciplinary proceeding, Respondent disregarded his duties to his clients, the legal system, and the legal profession. His wide-ranging misconduct must be met with disbarment.

#### V. ORDER

The Court therefore **ORDERS**:

1. **KEVIN D. HEUPEL**, attorney registration number **30264**, will be **DISBARRED FROM THE PRACTICE OF LAW**. The **DISBARMENT SHALL** take effect only upon issuance of an “Order and Notice of Disbarment.”<sup>14</sup>
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 motions **on or before July 25, 2017**. Any response thereto **MUST** be filed within seven days.
5. The parties **MUST** file any application for stay pending appeal **on or before August 1, 2017**. Any response thereto **MUST** be filed within seven days.
6. Respondent **SHALL** pay restitution in the amount of \$7,685.00 to the Colorado Attorneys’ Fund for Client Protection **on or before August 8, 2017**.<sup>15</sup>

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have repeatedly held that a lawyer’s knowing misappropriation of funds, whether belonging to a client or third party, warrants disbarment except in the presence of extraordinary factors of mitigation”); *People v. Varallo*, 913 P.2d 1, 10-12 (Colo. 1996) (indicating that knowing conversion calls for disbarment, absent significant mitigation).

<sup>14</sup> In general, an order and notice of sanction 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.

<sup>15</sup> See Exs. 2-7 (showing restitution paid by the Attorneys’ Fund for Client Protection in seven of the client matters underlying this disciplinary case).

7. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a statement of costs **on or before July 25, 2017**. Any response thereto **MUST** be filed within seven days.

DATED THIS 11<sup>th</sup> DAY OF JULY, 2017.

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WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE

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