

**People v. Charles Anthony Zimmerman. 16PDJ006. July 28, 2016.**

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Charles Anthony Zimmerman (attorney registration number 24860). Zimmerman's disbarment took effect on September 1, 2016.

In five cases, Zimmerman accepted thousands of dollars in retainers in exchange for promises to perform legal work. In all five matters, he did little to no work and failed to return the unearned fees to his clients. In two of these matters, he accepted retainers after he had been suspended by the Colorado Supreme Court. Zimmerman thereby abandoned his clients, converted their funds, and engaged in the unauthorized practice of law.

Through this misconduct, Zimmerman violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Colo. RPC 1.4(a)(3) (a lawyer shall keep the 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 1.15(a) (2008) (a lawyer shall hold property of clients or third persons in the lawyer's possession separate from the lawyer's own property); Colo. 1.15A(a) (a lawyer shall hold property of clients separate from the lawyer's own property and keep client property in a trust account); Colo. RPC 1.16(d) (a lawyer shall protect the client's interests upon termination); Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists); Colo. RPC 5.5(a)(2) (a lawyer shall not practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction); 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> CHARLES ANTHONY ZIMMERMAN</p>	<p>Case Number: <b>16PDJ006</b></p>
<p><b>OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)</b></p>	

In five cases, Charles Anthony Zimmerman (“Respondent”) accepted thousands of dollars in retainers in exchange for promises to perform legal work. In all five matters, he did little to no work and failed to return the unearned fees to his clients. In two of these matters, he accepted retainers after he had been suspended by the Colorado Supreme Court. Respondent thereby abandoned his clients, converted their funds, and engaged in the unauthorized practice of law. His misconduct warrants disbarment.

### **I. PROCEDURAL HISTORY**

Respondent was immediately suspended by the Colorado Supreme Court for failure to cooperate in this disciplinary matter on October 31, 2014.<sup>1</sup>

On January 25, 2016, Alan C. Obye of the Office of Attorney Regulation Counsel (“the People”) filed a complaint in this matter with Presiding Disciplinary Judge William R. Lucero (“the Court”). The People sent the complaint that same day by certified mail to Respondent’s registered home address of 4760 South Wadsworth Boulevard, D302, Denver, Colorado 80123-1387; his registered business address of 4420 Tennyson Street, Denver, Colorado 80212-2310; and a third known address of 899 Logan Street, Suite 200, Denver, Colorado 80203.<sup>2</sup> Respondent failed to answer, and the Court granted the People’s motion

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<sup>1</sup> Ex. 1.

<sup>2</sup> Ex. 2.

for default on April 8, 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.<sup>3</sup>

On June 13, 2016, the Court held a sanctions hearing under C.R.C.P. 251.15(b). Obye represented the People; Respondent did not appear. At the hearing, Gregg Thomas testified in person, Dorian Green provided a witness statement via telephone, and the People's exhibits 1-2 were admitted into evidence.

## **II. ESTABLISHED FACTS AND RULE VIOLATIONS**

Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on October 14, 1994, under attorney registration number 24860.<sup>4</sup> He is thus subject to the Court's jurisdiction in these disciplinary proceedings.<sup>5</sup>

### **Thomas Matter**

In October 2013, Gregg Thomas hired Respondent to represent him in a receivership action.<sup>6</sup> On October 31, 2013, Thomas's father, Danny Thomas, wired \$1,750.00 into Respondent's PayPal account.<sup>7</sup> Those funds were not moved from the PayPal account to Respondent's COLTAF account or his law firm operating account.<sup>8</sup> Respondent's COLTAF account was in a closed status from October 2013 to November 27, 2013.<sup>9</sup>

At Gregg Thomas's request, Respondent emailed him a written fee agreement on November 7, 2013.<sup>10</sup> The fee agreement, which was never signed by Gregg Thomas or Danny Thomas, provided in part:

Our professional fees for legal services will be determined primarily by the amount of time our attorneys and other personnel spend performing services on your behalf. The hourly rate of \$350/hour will be billed against the retainer balance. To date, \$1,750.00 (5 hours' time) of the initial retainer of \$7,000.00 has been received.<sup>11</sup>

On November 7, 2013, Respondent sent an email requesting that Danny Thomas wire the remainder of the retainer—\$5,250.00—to Respondent's operating account.<sup>12</sup> The next day, Danny Thomas did so via a Wells Fargo wire transfer into Respondent's operating

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<sup>3</sup> See C.R.C.P. 251.15(b); *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

<sup>4</sup> Compl. ¶ 1.

<sup>5</sup> See C.R.C.P. 251.1(b).

<sup>6</sup> Compl. ¶ 4.

<sup>7</sup> Compl. ¶ 5.

<sup>8</sup> Compl. ¶ 6.

<sup>9</sup> Compl. ¶ 7.

<sup>10</sup> Compl. ¶ 8.

<sup>11</sup> Compl. ¶¶ 9-10.

<sup>12</sup> Compl. ¶ 11.

account at First Bank of Colorado.<sup>13</sup> Respondent did not place this payment into his COLTAF account.<sup>14</sup> By November 18, 2013, the balance of Respondent's operating account was \$348.23.<sup>15</sup>

Respondent failed to appear at a scheduled appointment with Gregg Thomas on November 11, 2013.<sup>16</sup> On November 25, 2013, Gregg Thomas sent Respondent an email asking him a question about his case, and Respondent replied, stating that he would call to follow up that afternoon.<sup>17</sup> Respondent did not do so.<sup>18</sup>

On three occasions between early December 2013 and late January 2014, Gregg Thomas or Danny Thomas demanded a refund of the retainer or an accounting.<sup>19</sup> On each occasion, Respondent promised a prompt refund.<sup>20</sup> Respondent never provided a refund or an accounting.<sup>21</sup>

In this matter, Respondent violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Colo. RPC 1.4(a)(4) (a lawyer shall promptly comply with reasonable requests for information); Colo. RPC 1.15(a) (2008) (a lawyer shall hold property of clients or third persons in the lawyer's possession separate from the lawyer's own property); Colo. RPC 1.16(d) (a lawyer shall protect the client's interests upon termination); and Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

### **Kellywood Matter**

Colleen Kellywood hired Respondent in October 2013 to represent her in a breach of contract matter against the seller in a real estate transaction.<sup>22</sup> She was not provided a fee agreement.<sup>23</sup> Respondent verbally advised her that he would charge a \$450.00 retainer and would bill against it at \$225.00 per hour.<sup>24</sup>

On October 16, 2013, Kellywood wired \$450.00 into Respondent's PayPal account; Respondent did not deposit that payment into his COLTAF account or his law firm operating account.<sup>25</sup> Respondent's COLTAF account was in a closed status from October 2013 through

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<sup>13</sup> Compl. ¶ 12.

<sup>14</sup> Compl. ¶ 13.

<sup>15</sup> Compl. ¶ 14.

<sup>16</sup> Compl. ¶ 15.

<sup>17</sup> Compl. ¶ 16.

<sup>18</sup> Compl. ¶ 17.

<sup>19</sup> Compl. ¶¶ 18, 21, 24.

<sup>20</sup> Compl. ¶¶ 19, 22, 25.

<sup>21</sup> Compl. ¶ 26.

<sup>22</sup> Compl. ¶ 40.

<sup>23</sup> Compl. ¶ 41.

<sup>24</sup> Compl. ¶ 42.

<sup>25</sup> Compl. ¶ 43-44.

November 27, 2013.<sup>26</sup> The day he received payment, Respondent agreed to write a demand letter to the seller on Kellywood's behalf, but he did not send the demand letter at that time.<sup>27</sup>

Kellywood called and emailed Respondent many times in October and November 2013, requesting an update on her case.<sup>28</sup> She did not hear from Respondent until December 10, 2013, when he emailed, apologizing for the delay, noting that he would be back at work in the next few days, and promising to complete the demand letter at that time.<sup>29</sup>

Respondent sent Kellywood's demand letter on December 14, 2013.<sup>30</sup> On January 8, 2014, he promised to send a second demand letter in a few days.<sup>31</sup> He never sent the second letter.<sup>32</sup> Kellywood sent him numerous emails over the following six weeks asking him to contact her.<sup>33</sup>

On February 28, 2014, Kellywood retained a new attorney, Terry Gaines, to represent her.<sup>34</sup> Gaines sent Respondent a letter on March 18, 2014, terminating Respondent's services and demanding a return of Kellywood's retainer.<sup>35</sup> Respondent did not reply.<sup>36</sup>

More than five months later, on August 11, 2014, Kellywood received an email from Respondent in which he apologized for his delay in communication and asked whether she still wanted him to represent her.<sup>37</sup> In the email, he offered to send an updated demand letter on her behalf.<sup>38</sup> Kellywood forwarded Respondent's letter to Gaines.<sup>39</sup> The same day, Gaines emailed Respondent, requesting a full refund of Kellywood's retainer.<sup>40</sup> Respondent replied, stating, "Response to request to follow."<sup>41</sup> On August 24, 2014, Gaines again demanded that Respondent return Kellywood's retainer; Respondent did not respond and, in fact, never provided Kellywood a refund or an accounting.<sup>42</sup>

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<sup>26</sup> Compl. ¶ 45.

<sup>27</sup> Compl. ¶¶ 46-47.

<sup>28</sup> Compl. ¶ 48.

<sup>29</sup> Compl. ¶¶ 49-50.

<sup>30</sup> Compl. ¶ 51.

<sup>31</sup> Compl. ¶ 53.

<sup>32</sup> Compl. ¶ 54.

<sup>33</sup> Compl. ¶ 55.

<sup>34</sup> Compl. ¶ 56.

<sup>35</sup> Compl. ¶ 57.

<sup>36</sup> Compl. ¶ 58.

<sup>37</sup> Compl. ¶ 59.

<sup>38</sup> Compl. ¶ 59.

<sup>39</sup> Compl. ¶ 60.

<sup>40</sup> Compl. ¶ 61.

<sup>41</sup> Compl. ¶ 62.

<sup>42</sup> Compl. ¶¶ 63-65.

In this matter, Respondent violated Colo. RPC 1.3, Colo. RPC 1.4(a)(3) (a lawyer shall keep the client reasonably informed about the status of the matter); Colo. RPC 1.4(a)(4); Colo. RPC 1.15(a) (2008) and Colo. 1.15A(a) (a lawyer shall hold property of clients separate from the lawyer's own property and keep client property in a trust account); and Colo. RPC 1.16(d).

### **Green Matter**

In autumn 2013, Amanda Green and her husband Dorian attended a real estate investment seminar, where Respondent made a presentation.<sup>43</sup> In April 2014, the Greens hired Respondent to do the following: dissolve the Greens' company, Serving U Solutions, Inc., in Nevada and register Serving U in Colorado; renew an Ohio registration so that Serving U would be able to sell property in Ohio; draft the operating agreements and other documents necessary to permit Serving U and the Greens' other company, Restoration Realty Investors, LLC, to conduct real estate transactions in Colorado; and convert Serving U to a limited liability company ("LLC") in Colorado and Ohio, maintaining the same business EIN.<sup>44</sup>

Dorian Green signed Respondent's fee agreement, which provided that his professional fees, including legal services and filing fees, would total \$1,950.00.<sup>45</sup> The Greens paid Respondent a \$1,950.00 flat fee by check on April 24, 2014, and he deposited that check into his law firm operating account the same day.<sup>46</sup> By April 28, 2014, Respondent's law firm operating account balance was \$607.91.<sup>47</sup>

On or around May 22, 2014, Respondent registered Restoration and Serving U with the Colorado Secretary of State.<sup>48</sup> In July 2014, following several requests from the Greens, Respondent filed the paperwork necessary to renew Serving U's registration in Ohio.<sup>49</sup> He never converted the Ohio company to an LLC, as he had agreed to do.<sup>50</sup>

After July 2014, Respondent stopped returning the Greens' calls, save for one call in September 2014 in which he apologized for failing to communicate and stated that he was sick and hospitalized.<sup>51</sup> In October 2014, the Greens discovered that Respondent had not done any work to dissolve the Nevada corporation or to convert Serving U to an LLC in Colorado.<sup>52</sup> As a result, they had to pay a \$100.00 delinquency fee to the Nevada Secretary of

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<sup>43</sup> Compl. ¶ 78.

<sup>44</sup> Compl. ¶ 79.

<sup>45</sup> Compl. ¶¶ 80-81.

<sup>46</sup> Compl. ¶¶ 82-83.

<sup>47</sup> Compl. ¶ 84.

<sup>48</sup> Compl. ¶ 85.

<sup>49</sup> Compl. ¶ 86.

<sup>50</sup> Compl. ¶ 87.

<sup>51</sup> Compl. ¶ 88.

<sup>52</sup> Compl. ¶ 89.

State and an additional \$900.00 Nevada licensing fee.<sup>53</sup> They also learned that Serving U was delinquent with the Colorado Secretary of State, which meant that they were required to pay a \$100.00 filing fee to return the business to good standing.<sup>54</sup> As a result of the delinquency, the Greens' request for a business line of credit with Public Service Credit Union was declined.<sup>55</sup>

The Greens left several voicemail messages for Respondent, asking him to return their calls, provide an accounting, and refund their money.<sup>56</sup> Respondent did none of these things.<sup>57</sup> Respondent's license to practice law was suspended on October 31, 2014, by order of the Colorado Supreme Court under C.R.C.P. 251.8.6, but he did not notify the Greens of his suspension.<sup>58</sup>

In this matter, Respondent violated Colo. RPC 1.3; Colo. RPC 1.4(a)(3); Colo. RPC 1.4(a)(4); Colo. RPC 1.15(a) (2008); Colo. RPC 1.16(d); and Colo. RPC 8.4(c).

### **Scott Matter**

In December 2014, Bryan Scott hired Respondent to review lease agreements for his rental business.<sup>59</sup> At that time, Respondent's license to practice law had already been suspended.<sup>60</sup> A copy of that order had been mailed to Respondent's registered business and home addresses.<sup>61</sup>

Respondent and Scott entered into a fee agreement on December 10, 2014.<sup>62</sup> Two days later, Scott paid Respondent a flat fee of \$1,260.00 via direct deposit into Respondent's law firm operating account.<sup>63</sup> Four days after that, Respondent's law firm operating account balance was \$272.82.<sup>64</sup>

Respondent's did not perform any work on Scott's matter.<sup>65</sup> Scott sent him several emails in January and February 2015 asking about the delay and whether he should hire another attorney.<sup>66</sup> Respondent replied to some of these emails, apologizing and stating that he would get back to him the next day, but he failed to do so.<sup>67</sup>

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<sup>53</sup> Compl. ¶ 90.

<sup>54</sup> Compl. ¶¶ 91-92.

<sup>55</sup> Compl. ¶ 93.

<sup>56</sup> Compl. ¶ 94.

<sup>57</sup> Compl. ¶ 95.

<sup>58</sup> Compl. ¶¶ 96-97.

<sup>59</sup> Compl. ¶ 114.

<sup>60</sup> Compl. ¶ 115.

<sup>61</sup> Compl. ¶ 115.

<sup>62</sup> Compl. ¶ 116.

<sup>63</sup> Compl. ¶ 117.

<sup>64</sup> Compl. ¶ 118.

<sup>65</sup> Compl. ¶ 119.

<sup>66</sup> Compl. ¶ 120.

<sup>67</sup> Compl. ¶¶ 121-22.

Scott terminated the relationship by email on February 10, 2015, and requested return of his file and a full refund.<sup>68</sup> On February 23, 2015, Respondent emailed Scott, saying, “Thank you for your patience. I am still out of town, but I should return this evening. I will be certain to contact you by noon tomorrow in order to arrange return of fees.”<sup>69</sup> Scott did not hear from Respondent after that.<sup>70</sup> To date, Respondent has not refunded any money or provided Scott with an accounting.<sup>71</sup>

Respondent’s conduct in the Scott matter violated Colo. RPC 1.3; Colo. PRC 1.4(a)(3); Colo. RPC 1.4(a)(4); Colo. RPC 1.15A(a); Colo. RPC 1.16(d); and Colo. RPC 8.4(c).

### **Selby Matter**

Joel Selby is the owner of Spotlight Property Buyers, a company that buys and sells real estate.<sup>72</sup> In December 2014—at a time when Respondent’s license to practice law had been suspended—Respondent agreed to perform work for Selby, including preparation of a trust agreement and related documents to create a trust that Selby could use to buy a property.<sup>73</sup> Selby also hired Respondent to modify a Colorado contract to buy and sell real estate to accommodate the trust as a buyer.<sup>74</sup> Respondent did not tell Selby that his license was suspended.<sup>75</sup>

At Respondent’s direction, Selby wired \$280.00 to Respondent’s PayPal account on December 11, 2014, and an additional \$1,800.00 on December 17, 2014.<sup>76</sup> Respondent did not put these funds into his COLTAF account or his law firm operating account.<sup>77</sup> There had been no activity and a zero balance in Respondent’s COLTAF account since February 10, 2014.<sup>78</sup> Selby was never given a fee agreement.<sup>79</sup>

Selby understood that the \$280.00 payment was to cover the initial consultation, and that the \$1,800.00 was for Respondent’s work on the real estate documents and to respond to any of Selby’s follow-up questions.<sup>80</sup> Selby and Respondent exchanged several emails in January 2015, and the two met on January 30, 2015, to review the documents that Respondent had prepared.<sup>81</sup> Selby agreed to review the documents and then contact

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<sup>68</sup> Compl. ¶ 123.

<sup>69</sup> Compl. ¶ 124.

<sup>70</sup> Compl. ¶ 125.

<sup>71</sup> Compl. ¶ 126.

<sup>72</sup> Compl. ¶ 143.

<sup>73</sup> Compl. ¶¶ 144-45, 148.

<sup>74</sup> Compl. ¶ 146.

<sup>75</sup> Compl. ¶ 149.

<sup>76</sup> Compl. ¶ 150.

<sup>77</sup> Compl. ¶ 151.

<sup>78</sup> Compl. ¶ 152.

<sup>79</sup> Compl. ¶ 153.

<sup>80</sup> Compl. ¶ 154.

<sup>81</sup> Compl. ¶¶ 155-56.

Respondent with any questions as Selby began using the documents.<sup>82</sup> That meeting was Selby's last contact with Respondent.<sup>83</sup>

In February and March 2015, Selby emailed Respondent with questions about the documents.<sup>84</sup> Respondent did not respond.<sup>85</sup> Because Respondent failed to answer those questions, Selby never created a trust, nor did he use the real estate contract or other documents that Respondent created.<sup>86</sup>

Respondent's conduct in the Selby matter violated Colo. RPC 1.3; Colo. RPC 1.4(a)(3); Colo. RPC 1.4(a)(4); Colo. RPC 1.15A(a); and Colo. RPC 8.4(c).

### **Unauthorized Practice of Law**

Respondent engaged in the unauthorized practice of law when he entered into contracts to provide legal services and performed legal services in the Scott and Selby matters while under an order of suspension from the Colorado Supreme Court.<sup>87</sup> He thereby violated Colo. RPC 5.5(a)(2) (a lawyer shall not practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction) and Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists). Respondent also violated Colo. RPC 3.4(c) by failing to notify Kellywood, Green, Scott, and Selby of his suspension, as he was required to do under C.R.C.P. 251.28(b).<sup>88</sup>

### **III. SANCTIONS**

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA Standards")<sup>89</sup> and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.<sup>90</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: By neglecting and abandoning client matters entrusted to him, Respondent breached duties to his clients of communication, diligence, honesty, and loyalty to his clients. Respondent also violated duties he owed to the legal profession and the courts

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<sup>82</sup> Compl. ¶ 157.

<sup>83</sup> Compl. ¶ 158.

<sup>84</sup> Compl. ¶ 159.

<sup>85</sup> Compl. ¶ 160.

<sup>86</sup> Compl. ¶ 161.

<sup>87</sup> Compl. ¶ 181.

<sup>88</sup> Compl. ¶ 176.

<sup>89</sup> Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).

<sup>90</sup> See *In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).

when he flouted the Colorado Supreme Court's order of suspension by engaging in the unauthorized practice of law.

*Mental State:* The Court's order entering default establishes that Respondent knowingly converted client funds. The Court infers from Respondent's extensive pattern of misconduct and his occasional communication with clients that he knowingly engaged in the remaining client-centered conduct, described above. Finally, the Court concludes that Respondent intentionally violated the Colorado Supreme Court's order of suspension when he entered into contracts to provide legal services and accepted money to perform those services while his law license was suspended.

*Injury:* By failing to communicate and provide diligent representation to his clients, Respondent caused them legal harm and emotional stress. His conversion of unearned fees seriously injured his clients financially.

At the hearing, Dorian Green provided a telephonic statement detailing the harm occasioned by Respondent's misconduct, in addition to the injury summarized above—namely, assessment of \$1,100.00 in delinquency fees and rejection of a line of credit. Green related that Respondent's failure to exercise diligence caused him personal stress, as he had to perform the same tasks he previously assigned to Respondent while juggling his regular day job. Eventually, he hired another Colorado law firm to “fix” everything, which caused a financial strain; Green explained that he would otherwise have allocated that money toward marketing and other business opportunities that could have yielded substantial returns. This financial and personal stress placed a strain on his marriage, Green said. Green also impugned Respondent's “blatant disregard” for his professional obligations as “intolerable,” noting that Respondent's misconduct—taking client money and then “disappear[ing] off the planet—reflects very poorly on the legal profession. “[W]e are trusting [attorneys] to help us handle things that we otherwise can't do ourselves, and then to get burned like that, it's unacceptable in my book,” he said.

Gregg Thomas testified at the sanctions hearing that he owned a real estate development company, which he was “wrapping up” through the court system at the time his wife underwent surgery for stage-3 colon cancer. The court granted Thomas leave to keep a property that was in receivership if he met certain court-imposed deadlines. Thomas's wife could not care for their son, who is confined to a wheelchair with spina bifida. So, Thomas cared for his son and hired Respondent to follow the court's orders and meet the deadlines. Respondent failed to do so, and Thomas did not retain the rights to the asset in receivership. Respondent's abandonment also took a significant emotional toll, creating additional stress during a fraught period for Thomas and his family, which, he said, “already has so much built-in drama with a special needs child.” Thomas said that Respondent's conduct was “devastating, and it was hard. It was very hard.”

Respondent's flagrant disregard for the Colorado Supreme Court's suspension order undermined the court's authority and the functioning of the disciplinary system. His

misconduct resulted in financial injury to Scott, who would have had productive use of the funds Respondent converted had Respondent obeyed his suspension order.

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

Disbarment is the presumptive sanction for Respondent’s misconduct in this case. ABA Standard 4.11 states that disbarment is generally appropriate when a lawyer knowingly converts client property, causing the client injury or potential injury. Disbarment is also warranted under ABA Standard 4.41, which calls for disbarment when a lawyer abandons the practice of law and causes serious or potentially serious injury to a client. ABA Standard 8.1, which recommends disbarment when a lawyer knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession, also applies here.

### **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>91</sup> Here, six circumstances undoubtedly aggravate Respondent’s misconduct: Respondent’s dishonest and selfish motive; a pattern of misconduct; multiple offenses; his refusal to acknowledge the wrongful nature of his conduct; his substantial experience in the practice of law; and his indifference to making restitution.<sup>92</sup> Just one factor—Respondent’s lack of prior disciplinary history—mitigates his misconduct.<sup>93</sup>

### **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,<sup>94</sup> mindful that “individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases.”<sup>95</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.

Colorado case law identifies disbarment as the proper sanction when a lawyer knowingly converts client funds, absent significant mitigation.<sup>96</sup> When conversion is coupled

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<sup>91</sup> See ABA Standards 9.21 & 9.31.

<sup>92</sup> ABA Standards 9.22(b)-(d), (g), & (i)-(j).

<sup>93</sup> ABA Standard 9.32(a).

<sup>94</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>95</sup> *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

<sup>96</sup> *In re Haines*, 177 P.3d 1239, 1250 (Colo. 2008); *In re Cleland*, 2 P.3d 700, 703 (Colo. 2000).

with abandonment, disbarment is all the more appropriate.<sup>97</sup> And when these acts take place while the lawyer is practicing law without a license, it is imperative that the lawyer be disbarred “as a prophylactic measure to prevent further misconduct.”<sup>98</sup> Respondent’s several instances of misconduct, considered in conjunction with the six aggravating factors at play here—particularly his disregard of the disciplinary process and his failure to appear at the hearing—make clear that nothing less than Respondent’s disbarment will adequately protect the public.

#### IV. CONCLUSION

Over the course of more than a year, Respondent accepted retainers in five separate client matters, ignored his professional obligations by abandoning his clients, and kept several thousand dollars in unearned fees. After his law license was suspended by the Colorado Supreme Court, he solicited clients and accepted more than \$3,000.00 in retainers. These acts, taken together, amount to a renunciation of the oath Respondent swore when he gained admission to the Colorado bar: to maintain respect due to courts; to uphold the rule of law; to employ only such means that are consistent with truth and honor; and to treat all persons with honesty. Because Respondent has spurned his duties as a lawyer, he is no longer deserving of the privilege to practice law. He should be disbarred.

#### V. ORDER

The Court therefore **ORDERS**:

1. **CHARLES ANTHONY ZIMMERMAN**, attorney registration number **24860**, is **DISBARRED**. The **DISBARMENT SHALL** take effect only upon issuance of an “Order and Notice of Disbarment.”<sup>99</sup>
2. 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.

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<sup>97</sup> See, e.g., *In re Stevenson*, 979 P.2d 1043, 1043-44 (Colo. 1999); *People v. Townshend*, 933 P.2d 1327, 1329 (Colo. 1997); *People v. Roybal*, 949 P.2d 993, 996-98 (Colo. 1997); *People v. Lefly*, 902 P.2d 361, 364 (Colo. 1995).

<sup>98</sup> *In re McInerney*, 451 N.E.2d 401, 405 (Mass. 1983).

<sup>99</sup> In general, an order and notice of disbarment will issue thirty-five days after a decision is entered pursuant to 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.

4. The parties **MUST** file any post-hearing motion or application for stay pending appeal **on or before Thursday, August 18, 2016**. No extensions of time will be granted. Any response thereto **MUST** be filed within seven days.
5. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a “Statement of Costs” **on or before Thursday, August 18, 2016**. Any response thereto **MUST** be filed within seven days.
6. Respondent **SHALL PAY, no later than Friday, December 30, 2016, RESTITUTION** in the following amounts: \$7,000.00 to Danny Thomas; \$450.00 to Colleen Kellywood; \$1,950.00 to Amanda and Dorian Green; \$1,260.00 to Bryan Scott; and \$1,800.00 to Joel Selby. Respondent’s full payment of costs and restitution is a condition precedent to his filing any petition for readmission.

DATED THIS 28<sup>th</sup> DAY OF JULY, 2016.

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WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE

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Via Hand Delivery