People v. Anselm Andrew Efe. 23PDJ056. November 7, 2024.

Following a disciplinary hearing, a hearing board disbarred Anselm Andrew Efe (attorney registration number 38357), effective January 10, 2025.

In September 2019, Efe agreed to provide services to a client in relation to the client's disability and criminal matters. That month, Efe accepted a wire transfer of $15,000.00 from the client's stepfather as a retainer for the representation. Efe instructed the stepfather to wire the money into his business account even though he had not earned the retainer funds when he received them. Within two weeks of receiving the funds, Efe had depleted his business account without transferring any money from that account into his trust account. But Efe did not perform work to earn the retainer during the representation. Nor did he produce records that he was required to maintain showing how he handled and earned the funds and the basis or rate for the fees he charged.

In December 2019, the client terminated the representation. The following December, the stepfather sent an email to Efe, demanding that he return $10,000.00 of the retainer to the client by the end of the month. The stepfather also demanded that Efe return the remainder of any unearned funds by January 2021 with an accounting of the services he provided. Efe agreed. By summer 2022, however, he had returned only $5,000.00 and had not provided an accounting. In September 2022, the stepfather renewed his demand that Efe return the unearned funds and give an accounting of any earned funds. Efe did not do so.

Through this misconduct, Efe violated Colo. RPC 1.15A(a) (a lawyer must hold client property separate from the lawyer's own property); Colo. RPC 1.15A(b) (on receiving funds or other property of a client or third person, a lawyer must promptly deliver to the client or third person any funds or property that person is entitled to receive); Colo. RPC 1.15D (a lawyer must maintain appropriate trust account records); 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:** ANSELM ANDREW EFE, #38357	Case Number: **23PDJ056**
OPINION IMPOSING SANCTIONS UNDER C.R.C.P. 242.31	

Anselm Andrew Efe ("Respondent") accepted a $15,000.00 retainer via wire transfer into his business bank account although at the time he had not earned those funds. He thereby comingled his personal funds with the unearned client funds. In the two weeks that followed, Respondent depleted the bank account and, in the process, consumed the entire retainer. He failed to provide his client with an accounting of the funds he earned from the retainer and failed to maintain the financial records related to the representation that he was required to keep. Respondent's misappropriation of funds amounts to knowing conversion. Disbarment is the appropriate sanction for Respondent's misconduct.

I. PROCEDURAL HISTORY

On October 13, 2023, Erin R. Kristofco of the Office of Attorney Regulation Counsel ("the People") filed with Presiding Disciplinary Judge Bryon M. Large ("the PDJ") a four-claim complaint, alleging that Respondent violated Colo. RPC 1.15A(a) (Claim I), Colo. RPC 1.15A(b) (Claim II), Colo. RPC 1.15D (Claim III), and Colo. RPC 8.4(c) (Claim IV). Respondent answered the People's complaint on November 13, 2023. Two weeks later, the PDJ issued a scheduling order, setting the matter for a three-day hearing to take place on April 2-4, 2024, and establishing certain deadlines in the case, including a discovery cutoff date of March 5, 2024.

On March 5, 2024, Respondent filed "Efe's Motion for Continuance of Hearing Dates Pursuant to C.R.C.P. 121(c) § 1-11, and Enlargement of Time to Complete Discovery Pursuant to C.R.C.P. 6(b)." In that motion, Respondent sought additional time to forensically retrieve from his computer electronic files that he claimed were responsive to the People's discovery requests. He also requested to continue the hearing. On March 6, 2024, the People submitted a pair of motions, seeking entry of default as a sanction for Respondent's alleged failure to engage in discovery and

seeking an adverse inference under C.R.C.P. 242.30(b)(5)(B) as to Claims I-IV.[1] Also on March 6, 2023, after convening a remote status conference with the parties, the PDJ reset the hearing to September 11-13, 2024, to hold the hearing in person, as the office building where the PDJ's courtroom is located remained closed to the public following a fire set in the building in January 2024.[2] In the order resetting the hearing, the PDJ deemed moot Respondent's motion to continue the hearing but deferred adjudication of his motions to extend discovery and to extend the discovery cutoff date of March 5, 2024.

At a remote status conference on April 17, 2024, the PDJ determined that the discovery issues thus far required the PDJ to take a more active role in managing discovery. The PDJ extended Respondent's deadline to provide disclosures and discovery to the People to May 15, 2024, and placed in abeyance the People's motion for default as a sanction and motion for an adverse inference.[3]

The PDJ removed the People's motions from abeyance during a remote status conference on May 20, 2024. At that conference, Respondent represented that he had complied with his disclosure and discovery obligations to the best of his ability. The PDJ also invited further briefing on the pending motions. The parties submitted further briefing, which closed on June 14, 2024. On August 6, 2024, after considering the parties' additional briefing on the motion for an adverse inference, the PDJ issued an order granting that motion and denying the People's motion for default as a sanction. In that order, the PDJ directed the Hearing Board in this case to draw an adverse inference in the People's favor as to Claims I-IV. Just over three weeks later, on August 28, 2024, the parties appeared for an in-person prehearing conference, where they each confirmed they were ready to proceed to the disciplinary hearing.

On September 11 and 12, 2024, a Hearing Board comprising the PDJ and lawyers Rebecca A. Pescador and David N. Simmons held a hearing under C.R.C.P. 242.30. Kristofco attended for the People, and Respondent appeared pro se.

At the hearing's outset on the first day, Respondent hand-filed "Respondent's Motion for a Temporary Stay in Connection with the Petition for Order to Show Cause Pursuant to C.A.R. 21(f)(1)." Along with that motion, Respondent submitted a copy of the "Petition for Order to Show Cause Pursuant to C.A.R. 21" that he had filed earlier that morning with the Colorado Supreme Court in case number 24SA241. Respondent sought to stay the disciplinary proceeding

[1] Respondent filed separate responses to each motion on March 20, 2024.

[2] On August 8, 2024, the PDJ issued a "Notice Re: Change of Location for Disciplinary Hearing and Prehearing Conference," notifying the parties that the hearing and the prehearing conference would take place in Courtroom 2A of the Lindsey-Flanigan Courthouse at 520 West Colfax Avenue in Denver. The PDJ extends his gratitude to the judges and staff at Denver Juvenile Court for generously providing space to hold this hearing.

[3] *See* "Order Denying In Part and Granting In Part Motion to Continue Discovery, Placing Motion for Default and Motion for Adverse Inference in Abeyance, and Setting Status Conference" (Apr. 17, 2024).

and to continue the hearing pending that tribunal's consideration of his petition to review the PDJ's order of April 17, 2024, extending until May 15, 2024, his deadline to provide disclosures and discovery, and the PDJ's order of August 6, 2024, granting the People's motion for an adverse inference.

The PDJ determined that the Colorado Supreme Court had not yet decided Respondent's petition and concluded that the PDJ retained jurisdiction under C.A.R. 21(h)(1) to take up Respondent's motion for a stay.[4] The PDJ orally denied that motion based on his findings that Respondent had ample opportunity to produce discovery; that the PDJ did not err in granting the People's motion for an adverse inference; and that Respondent retained the remedy of appeal in this case. At Respondent's request, the PDJ provided a written ruling to Respondent. The Colorado Supreme Court denied Respondent's motion for a stay later that day.

During the hearing, the Hearing Board received remote testimony via the Zoom videoconferencing platform from Ramon Abramovich and in-person testimony from Joshua Hensley, Donna Scherer, and Respondent. The PDJ admitted stipulated exhibit S1,[5] the People's exhibits 1-5, and Respondent's exhibits B, D, E, and K.[6]

II. FINDINGS OF FACT

Respondent was admitted to the practice of law in Colorado on December 11, 2006, under attorney registration number 38357. He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[7]

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[4] "The filing of a petition under [C.A.R. 21] does not stay any underlying proceeding . . . ."

[5] On September 16, 2024, the People filed an "Unopposed Motion for Protective Order Pursuant to C.R.C.P. 242.41(e)" along with a redacted copy of Ex. S1. In their motion, the People argue that Ex. S1 reveals the account number of a bank account held by Ramon Abramovich, a witness in this case. Because the People represent that Respondent does not oppose the relief they seek, the PDJ finds that it can decide the motion without awaiting a response. Finding that the motion articulates good cause, the PDJ **GRANTS** the "Unopposed Motion for Protective Order Pursuant to C.R.C.P. 242.41(e)" and **SUPPRESSES** the unredacted exhibit S1.

[6] The PDJ **GRANTED IN PART AND DENIED IN PART** "The People's Motion In Limine Re Respondent's Non-Stipulated Exhibits B, F1, F2, F3, G, and H," filed on September 6, 2024. The PDJ declined to exclude exhibit B, finding that the People could cross examine Respondent about the document and that the Hearing Board could assess its credibility if admitted. The PDJ excluded exhibits F1, F2, F3, and G because the documents did not relate to a material fact and carried a likelihood of prejudice against Respondent's former client, Hensley, that exceeded the exhibits' probative value. *See People v. Garner*, 806 P.2d 366, 373-74 (Colo. 1991); *People v. Spoto*, 795 P.2d 1314, 1318 (Colo. 1990). Finally, the PDJ excluded exhibit H because portions of the document appeared to be missing and called into question its reliability, and because Respondent had not exchanged the document with the People, who did not have an opportunity to investigate it.

[7] C.R.C.P. 242.1(a).

Respondent's First Representation of Joshua Hensley

In summer 2019, Joshua Hensley was charged in a criminal matter that triggered a discipline proceeding with his employer, the Colorado Department of Corrections ("DOC"). Due to the criminal charges, Hensley was also excluded from his daughter's grade school campus and could no longer pick her up from school.

Hensley's spouse, Rene Wylie Garfield, suggested that Hensley seek Respondent's help with both the DOC matter and the issue with the school. That summer, Hensley met with Respondent, who agreed to represent and assist him in both matters. Hensley recalled from the meeting that he signed an agreement for the representation but that he did not receive a copy of the agreement from Respondent.

At the hearing, Hensley's recollection shifted as to the details of the work Respondent performed during the representation.[8] It seems clear from Hensley's and Respondent's accounts that Respondent undertook at least three tasks in summer and autumn 2019 as part of the representation. First, in a letter dated August 20, 2019, Respondent replied to a missive Hensley received from his daughter's school earlier that month notifying Hensley of his exclusion from the school's campus and activities.[9] In the one-page letter, Respondent stated that Hensley denied the charges against him but would comply with the school's restrictions until the criminal matter was resolved, and Respondent notified the school that Hensley "does not waive any rights or redress he may have under law."[10] Hensley credits the letter for the school's ultimate decision not to bar him from picking up his daughter. Second, Respondent prepared Hensley for the hearing with the DOC and represented Hensley at the hearing sometime that August. Following that hearing, on or around August 31, 2019, Hensley received the DOC's decision letter terminating his employment. Third, Respondent conferred with Hensley about appealing the DOC's decision and appeared with Hensley at a conference before an appellate board.[11] Hensley believed the conference took place around September or early October 2019. Hensley stated that the DOC made a settlement offer during this meeting: an unemployment benefits package conditioned on his agreement not to contest his termination. Rather than decide at the meeting, Hensley took time to consider the offer.

As payment for these services, Hensley said he gave Respondent a $5,000.00 check as an "umbrella" payment that covered Respondent's representation in the three matters described above. Respondent deposited Hensley's check, with "Legal Fee" written on the memo line, into his

[8] Further obscuring the details of this representation, Respondent and Hensley frequently referred to various meetings and hearings in the matter without clearly identifying the events' dates, participants, or purposes.

[9] Ex. D.

[10] Ex. D.

[11] Hensley identified the board as the Personnel Board of Appeals, likely referring to the Colorado State Personnel Board, which reviews appeals by Colorado state employees regarding adverse actions. *See* https://spb.colorado.gov.

business account with US Bank on August 21, 2019.[12] Hensley testified that Respondent earned the $5,000.00, which was "for services [Respondent rendered]." Even so, Hensley denied that Respondent ever provided a basis for the fee in writing; Hensley said he asked for, but did not receive, invoices for the work.

Respondent's Second Representation of Hensley

Respondent testified that during the employment discipline matter, Hensley sought to retain Respondent in a disability proceeding and, separately, to investigate certain witnesses in the criminal case. According to Respondent, Hensley believed that the witnesses gave false statements to police that aggravated the case against him, and he wanted Respondent to help uncover grounds for a potential civil case against the witnesses.[13] Respondent said that Hensley wanted him to begin the investigation right away and assured him that his father, Ramon Abramovich, would provide the necessary funds.[14] Respondent said that Hensley sent him discovery from the criminal matter around August 11 or 12, 2019, and that he began reviewing the material and frequently conferred with Hensley. Respondent pointed to three emails from July, September, and December 2019 as evidence of this work.[15] The emails, however, were sent by Hensley's spouse, Garfield, and do not show that Respondent performed legal work.

In early September 2019, Respondent sent Abramovich a draft fee agreement for the matter. The document was titled "Representation Agreement" and included the following language regarding the scope of the representation:

> **Scope/Limitation of Representation:** [Respondent] . . . is hereby engaged by Joshua Hensley . . . for the following matters: Disability payments and any civil lawsuit arising from false and malicious statements made pursuant to [Hensley's] criminal case. . . . The parties understand and agree that [Respondent] represents [Hensley] in no other matters and that the scope of [Respondent's] representation of [Hensley's] interest is limited to the matter stated above. . . .[16]

Abramovich testified that the scope outlined in the draft fee agreement accorded with his understanding about the representation's purpose, as conveyed to him by Hensley, though he also understood from Hensley that Respondent would work on Hensley's employment case and help Hensley secure authorization to pick up his daughter from her school.

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[12] Ex. 5 at 133, 169.

[13] Respondent added that Hensley hoped the investigation could also uncover helpful information for his defense lawyer to use in the criminal matter pending against him.

[14] Though Abramovich is actually Hensley's stepfather, at the hearing they each described their relationship as one of father and son.

[15] *See* Ex. E.

[16] Ex. 1 at 1.

The draft fee agreement also included the following provisions addressing Respondent's fee, the retainer amount, and the applicability of the draft agreement to other services:

> **Fees:** [Respondent's] usual hourly rate is $375 per hour. And para-legal Secretary rate is $150 per hour.
>
> Retainer. [Hensley] agrees that on the signing of this agreement, [Hensley] shall have paid to [Respondent] the sum of $15,000 as an initial retainer against which attorneys' fees, costs and other expenses may be billed. . . .
>
> . . .
>
> **Billing**: Approximately every month [Hensley] will receive a bill indicating all costs and [Respondent's] time expended during that billing period. Payment is due on receipt. . . .
>
> . . .
>
> **Prior Services:** Services rendered before the signing of this Agreement shall be included within the terms of this Agreement. . . .[17]

In an email dated September 7, 2019, Abramovich directed Respondent to revise the agreement so that it would authorize only "future attorney's fees, costs, and other expenses" to be billed against the retainer.[18] Abramovich also wanted Respondent to change the "Prior Services" section to read, "NO services rendered before the signing of this Agreement shall be included within the terms of this Agreement."[19]

Respondent responded to Abramovich's email two days later and suggested that they discuss the agreement during a conference call with Hensley.[20] Abramovich testified that, following this call, he understood that the $15,000.00 would be deposited into an "escrow-type account" against which Respondent would bill.[21] Abramovich further understood from the call that Hensley would pay with his own funds for matters outside the scope of the agreement. As Hensley described at the hearing, his understanding of the arrangement mirrored Abramovich's, and he was adamant that Respondent was not to withdraw money from the retainer without his approval.

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[17] Ex. 1 at 1-2.

[18] Ex. 2 at 9; *see also* Ex. 1 at 1.

[19] Ex. 2 at 10; *see also* Ex. 1 at 2.

[20] Ex. 2 at 9.

[21] We credit Abramovich's account of the conference call even though Hensley denied that he participated in the call. This is, in part, because Hensley also testified that he was present on a "three-way" telephone call during which Respondent and Abramovich discussed the draft fee agreement.

A day or two after the conference call, Abramovich said, Hensley urged him to proceed with the transfer. Abramovich recalled that Hensley required Respondent's forthwith help with issues related to Hensley's employment and to accessing his daughter's school. Abramovich understood that Hensley was satisfied with the draft fee agreement as written. For his part, Hensley testified that he did not recall ever seeing the draft agreement and that he never signed it. Even so, on September 10, 2019, Abramovich sent $15,000.00 via wire transfer to "Anselm Efe Care of EfeLaw LLC" at Respondent's business account with US Bank.[22]

Respondent Consumes the $15,000.00 Retainer

Records from Respondent's business account with US Bank show that the $15,000.00 wire transfer on September 10, 2019, raised his account balance to $15,005.20.[23] On September 11, 2019, Respondent made a $9,900.00 counter withdrawal from the account.[24] That day, the balance in the account was $5,013.63; on September 12, 2019, the balance was $4,362.80, and it dropped to $1,346.94 the next day.[25] Respondent depleted and overdrew the account to -$34.80 by September 23, 2019.[26] One week later, the account balance had fallen to -$862.65.[27]

At the hearing, Respondent testified that, when the $15,000.00 was transferred, Hensley owed him $10,000.00 for legal work, including $7,000.00 he alleged Hensley owed for work in the employment discipline proceeding. Hensley, having paid Respondent $5,000.00 the month before the wire transfer, denied that he continued to owe Respondent money.

The only description Respondent provided of the work he claimed to have done in Hensley's new matter was to state that he reviewed discovery from Hensley's criminal matter and engaged in lengthy conferrals with Hensley that lasted "for hours." Respondent produced no invoices or other documents showing how he earned any portion of the retainer. Those records, he said, are inaccessible. He explained that he placed some of the records in a storage unit in 2019 and saved other records on a computer drive that later crashed, rendering the files impossible or impracticable to retrieve. He did not explain why he could not access his storage unit during the disciplinary proceeding, and he showed no evidence to corroborate his claim about the computer hard drive or to demonstrate his efforts to retrieve the files.

[22] Ex. S1; *see also* Ex. 5 at 133.
[23] Ex. 5 at 136.
[24] Ex. 5 at 135, 137.
[25] Ex. 5 at 136.
[26] Ex. 5 at 143.
[27] Ex. 5 at 143.

Respondent Claims to Place Retainer Funds in His Trust Account

At the hearing, Respondent asserted for the first time in the proceeding that he used part of the $9,900.00 that he withdrew from his business account on September 11, 2019, to get a cashier's check for $5,000.00, which he deposited into his Colorado Trust Account Foundation ("COLTAF") trust account on Hensley's behalf. At the hearing, Respondent produced a previously undisclosed photocopy of the purported cashier's check receipt.[28] The document reflects that a cashier's check dated September 11, 2019, was payable to EfeLaw LLC, and bore the handwritten words "Joshua Hensley."[29] The receipt photocopy does not indicate what account, if any, the check was drawn from or deposited into.

Respondent testified that a document dated September 30, 2019, and labeled "COLTAF STATEMENT IN RE JOSHUA HENSLEY" shows that he deposited $5,000.00 into his trust account; the document purports to memorialize "Fees for possible Civil Suit and Malicious Statements made regarding Joshua Hensley in the Criminal Case People v. Joshua Hensley, ..."[30] The document is not a bank record and appears to have been created by Respondent. And the document does not list a date for the deposit. In addition, it purports to show that Respondent made three withdrawals totaling $4,987.50 on September 17, 20, and 27, 2019, for "legal fees owed" but does not describe how the funds were earned. In place of the written basis and rate of Respondent's fees, the document states "See Representative (sic) Agreement."

The People's investigator, Donna Scherer, testified that she reviewed the purported COLTAF statement. She also reviewed Respondent's COLTAF account interest remittance report, which indicated that Respondent did not hold funds in his trust account in September 2019. Scherer did not review the purported COLTAF statement against the bank records for Respondent's trust account, however, because Respondent did not provide those records in response to the People's request to produce financial records related to Hensley's matters. Though the People could have subpoenaed the trust account records from the bank, Scherer explained, they did not do so because Abramovich wired the retainer funds to Respondent's business account with US Bank, and the records for that account did not show that Respondent moved funds directly to any other account, including his trust account.[31]

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[28] Ex. K.

[29] Ex. K.

[30] Ex. B.

[31] Respondent asserted both that the People could retrieve his trust account records by subpoena and also that the People said they had or would pursue the trust account records. While we agree that the People under Colo. RPC 1.15D could easily have accessed the records, which would have guaranteed a more thorough investigation, Respondent ultimately remained responsible to maintain and produce the records.

Termination of the Second Representation

Respondent testified that he closed out Hensley's first matter in late December 2019 and sent Hensley an invoice for payment. Respondent did not produce a copy of the closeout letter or the invoice at the hearing, and Hensley denied receiving those documents. According to Respondent, the second representation did not end until summer 2020, around the time that Hensley accepted a favorable plea deal in his criminal matter and called off Respondent's investigation. Though Respondent testified that he had earned the entire $15,000.00 retainer by that time, he produced no records or work product to support that assertion, and Hensley denied that Respondent undertook work for him in matters other than the appeal.

Hensley's Account of the Second Representation's Scope

At the hearing, Hensley gave an altogether different account concerning the scope of the second representation than set forth in the draft fee agreement. According to Hensley, after he received the DOC's termination decision, Respondent advised him that he could appeal the DOC's decision and assert that the DOC wrongfully terminated him due to his disabilities.[32] Hensley said that Respondent required $15,000.00 to pursue the appeal. Hensley, now unemployed, asked Abramovich for the funds. Hensley testified that he asked Abramovich to transfer the funds quickly so that Respondent could work on the matter before the brief window to appeal the DOC's decision closed. Hensley acknowledged that he spoke with Respondent about possibly investigating whether witnesses in the criminal matter had made false statements to law enforcement but denied that was the purpose of the representation. Hensley repeatedly rebuffed the assertion that he provided Respondent with discovery from the criminal case.

Around November or early December 2019, Hensley said, he agreed to waive his right to appeal the DOC's termination decision in exchange for unemployment benefits. With no appeal to pursue, he said, he terminated Respondent's representation just before Christmas 2019.

We struggle to credit Hensley's alternate account of the representation, which is contradicted by the plain language of the draft fee agreement and by Abramovich's testimony that the agreement's scope accorded with his understanding of the representation's purpose. But we find that the inconsistencies between Hensley's and Respondent's descriptions of the representation are, ultimately, not material to our determinations in this matter because we are tasked with determining whether Respondent performed any work to earn the $15,000.00 he consumed.

[32] Hensley, a U.S. military veteran, served five tours in Afghanistan and Iraq. Following his service, he was diagnosed with traumatic brain injury and post-traumatic stress disorder.

Hensley's and Abramovich's Requests for a Refund

After the second representation ended, Hensley testified, he sent text messages and emails to Respondent requesting that Respondent return the unearned portion of the retainer and provide an accounting. Hensley said that Respondent did not heed his requests.

Abramovich testified that around September 2020, he suggested Hensley ask Respondent to return the unearned portion of the retainer. Hensley did as Abramovich asked. He testified he repeatedly asked Respondent to return the unused portion of the retainer with an accounting of the funds that Respondent had consumed. Hensley said that Respondent did not heed his requests.

By December 2020, having received no money from Respondent, Abramovich decided to personally follow up on the matter. He emailed Respondent on December 11, 2020:

> I understand that the matter for which the services were originally required has been substantially resolved and the full retainer is no longer required. Furthermore, I have been informed by Joshua Hensley that he has requested that $10,000 be returned to him from the funds held by Efelaw by December 15, 2020 and that the remainder of the funds are to be returned in January 2021 with a full accounting of the services provided, amounts invoiced and amounts paid. . . .[33]

Respondent replied the next day and assured Abramovich that "[t]he funds will be returned to Joshua Hensley as stated [in your email]."[34] This seemed to mollify Abramovich, who responded by thanking Respondent for helping Hensley.

In summer 2022, however, Abramovich learned from Hensley that Respondent had returned only $5,000.00. In an email dated September 12, 2022, Abramovich renewed his demand: "Please return $5000 immediately and provide an accounting for any services provided which were funded from the remaining $5000 and return that remainder ASAP. . . ."[35] Respondent responded the next day and countered that he would return $5,000.00 by November 15, 2022, and provide an accounting for the services he rendered.[36] Abramovich wrote back a few hours later with Hensley and Garfield copied on the message and reiterated, "Since you have only returned $5000, the balance you are retaining is $10,000 . . . less any amount applied to services you had provided. . . . Any unused funds from the retainer MUST be returned in an expeditious manner."[37]

[33] Ex. 3 at 4.
[34] Ex. 3 at 4.
[35] Ex. 4 at 8.
[36] Ex. 4 at 8.
[37] Ex. 4 at 8.

Despite Respondent's assurance that he would return an additional $5,000.00 and provide an accounting for the remainder of the funds by November 15, 2022, Abramovich and Hensley testified that Respondent did not do so. In fact, Hensley stated that Respondent returned only $3,000.00. Even so, we credit the account that Respondent returned $5,000.00 as set forth in the emails exchanged in September 2022, which are more contemporaneous to the transaction than Hensley's testimony. As such, we find that Respondent returned $5,000.00 at some point between December 2020 and September 2022. Abramovich's testimony that Hensley told him in summer 2022 that Respondent had returned $5,000.00 bolsters our finding.

For his part, Respondent testified that he earned the entire retainer, notwithstanding that his emails to Abramovich in 2020 and 2022 suggest otherwise. Respondent explained that after the representation ended he offered to return $10,000.00 to Hensley as "some kind of pro bono" because Hensley was experiencing financial distress. According to Respondent, he has refunded $6,000.00 to date; he claimed that he paid Hensley $1,000.00 in addition to the $5,000.00 outlined in the emails from September 2022. As for Hensley's and Abramovich's requests for an accounting, Respondent stated that after he received Abramovich's email in December 2020, he provided an accounting for $5,000.00 to Hensley.

At the hearing, Respondent did not produce any records showing that he paid $6,000.00 to Hensley or gave Hensley an accounting for any portion of the $15,000.00 retainer. He did not mention the refund arrangement or the accounting in his emails with Abramovich, he said, because Hensley had asked him not to. But Respondent did not elicit Hensley's testimony about either the alleged refund or the accounting he claimed he provided. Instead, Respondent expressed concern that raising those matters would create conflict between father and son. "I understand the dynamics of that relationship," he said, stating that he "didn't want to add to that" by raising the refund and the accounting with Abramovich.

III. LEGAL ANALYSIS

Colo. RPC 8.4(c) (Claim IV)

We begin our analysis with the People's fourth claim, as our determination of this claim factors into our analyses of other alleged rule violations in this case. In their fourth claim, the People allege that Respondent violated Colo. RPC 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. The People argue that Respondent breached this rule when he consumed some or all the $15,000.00 advance retainer Abramovich paid to him on Hensley's behalf, even though he knew he had not earned the money. After Hensley and Abramovich requested a refund, the People say, Respondent kept $10,000.00 of the retainer, knowing that he had not earned the money and did not have permission to spend it for his own purposes. The People contend that because Respondent knowingly spent client money for his own purposes, he knowingly converted those funds.

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.[38] Neither the lawyer's motive in taking the money nor the lawyer's intent to return the funds is relevant to a conversion inquiry.[39] Further, a lawyer's unauthorized temporary use of another's funds—even when the lawyer eventually earns a portion of those funds or intends to repay the funds—constitutes conversion, regardless of whether the lawyer personally benefits from that use.[40] Unlike other violations of Colo. RPC 8.4(c), to establish a claim of knowing conversion the People must demonstrate that the lawyer had a knowing mental state, which requires a showing of actual knowledge of the fact in question.[41]

Because a lawyer "must deposit an advance of unearned fees in the lawyer's trust account,"[42] we are concerned that Respondent required Abramovich to wire the $15,000.00 into his business account rather than into a trust account. That wire brought the account balance to $15,005.20 on September 10, 2019. Thereafter no paper trail documents the wired amount moving from Respondent's business account to his trust account. Just three days later, the account balance had dropped to $1,346.94. By September 23, 2019, less than two weeks after he received the retainer, Respondent carried a negative balance in the account. But we have no evidence to conclude that Respondent earned the $13,658.26 that he withdrew between September 10 and September 13.

Respondent asks us to accept that Hensley owed him an outstanding balance of $10,000.00, including $7,000.00 he claimed Hensley owed from the first representation, at the time he accepted the $15,000.00 retainer from Abramovich. Respondent also contends that he deposited $5,000.00 from the retainer into his trust account for Hensley's benefit. But we cannot find Respondent credible on either score. No documents corroborate his claim that he earned the entire retainer, and we therefore infer under C.R.C.P. 242.30(b)(5)(B) that he did not.[43] Moreover, communications between Abramovich and Respondent are clear that Abramovich did not intend for any portion of the retainer to be used for work Respondent did previously.

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[38] *In re Kleinsmith*, 2017 CO 101, ¶ 14 (citing *People v. Varallo*, 913 P.2d 1, 10-11 (Colo. 1996)).

[39] *See Varallo*, 913 P.2d at 10-11.

[40] *Id.* at 11; *see also In re Barlow*, 657 A.2d 1197, 1201 (N.J. 1995) ("Nor is the intent to repay funds or otherwise make restitution a defense to the charge of knowing misappropriation.").

[41] *See People v. Small*, 962 P.2d 258, 260 (holding that a lawyer's knowing misappropriation of another's property requires the lawyer's actual knowledge, rather than merely a reckless state of mind); Colo. RPC 1.0(f) (defining "knowing" and noting that a person's knowledge may be inferred from the circumstances).

[42] Colo. RPC 1.5 cmt. 12; *see also* Colo. RPC 1.5(f) ("Advances of unearned fees are the property of the client and shall be deposited in the lawyer's trust account pursuant to Rule 1.15B(a)(1) until earned.").

[43] *See* "Order Granting People's Motion for an Adverse Inference as to Claims I-IV and Denying People's Motion for Default as a Sanction" at 5-6.

Further, we do not find credible Respondent's assertion that he used a cashier's check to deposit $5,000.00 of Abramovich's money for Hensley's benefit into his trust account. We view with a jaundiced eye Respondent's trial-time disclosure of a photocopy of the purported cashier's check receipt. By waiting until trial to produce the record, Respondent deprived the People of an opportunity to investigate either its authenticity or his account of the check's purpose. For instance, though the document contains a handwritten notation that the funds were related to Hensley's matter, we are unable to determine whether Respondent made that notation when he withdrew the funds or sometime thereafter. In addition, the check receipt does not identify the accounts the cashier's check was drawn from or deposited into.

In sum, Respondent can neither show that he conferred a benefit nor performed legal services entitling him to the $15,000.00, nor can he trace a credible paper trail of where the funds ended up. Thus, we conclude that Respondent consumed, and therefore converted, some or all of the $15,000.00 payment when he received the funds or shortly thereafter.

Our conclusion here is bolstered by Respondent's knowledge that he was not authorized to take the funds. Under the plain language of the draft fee agreement, Respondent was entitled to payment for his services when he produced a bill or an invoice. Hensley and Abramovich reiterated that understanding during their testimony. They also recounted that Respondent never presented a bill or an invoice during the representation. For his part, Respondent showed no evidence, nor even asserted, that he billed Hensley before September 23, 2019, when he fully depleted the business account with US Bank that contained Hensley's funds.

Furthermore, Respondent knew that his business account held the retainer when he removed $9,900.00 from the account via a counter withdrawal on September 11, 2019. He also knew that the balance of the deposit remained in the account while he continued spending down funds until they were depleted around September 23, 2019. Given these facts, we conclude that at the time Respondent withdrew all the retainer funds from his account, he knew that he was not authorized to use that money for his own purposes.

Finally, Respondent points to emails with Abramovich in December 2020 and September 2022 that suggest he earned some of the retainer, perhaps as much as $5,000.00, during the representation. In those emails, Abramovich thrice demands that Respondent return at least $10,000.00 of the retainer and provide an accounting of any services funded from the remaining $5,000.00. Indeed, the email communications lead us to conclude a consensus existed that Respondent had rendered services under the agreement and thus had earned a portion of the $15,000.00, but no more than $5,000.00.

But even though we find that Respondent did not convert the entire $15,000.00, we are still obliged to find knowing conversion: no records or other evidence shows that he earned the $10,000.00 portion that Abramovich demanded be returned. Nor did Respondent substantiate his explanation of why he could not produce those records. Thus, drawing an adverse inference in the People's favor, we find that they have met their burden as to Claim IV by clearly and

convincingly showing that Respondent contravened Colo. RPC 8.4(c) when he knowingly converted some, though not all, of the retainer.

Colo. RPC 1.15A(a) (Claim I)

We next address the People's claim that Respondent violated Colo. RPC 1.15A(a), which provides that a lawyer must hold property of clients and third persons that is in the lawyer's possession in connection with a representation in a trust account that complies with Colo. RPC 1.15B and separate from the lawyer's own property. The People argue that Respondent violated this rule by holding the funds Abramovich paid on Hensley's behalf in his business account, thereby comingling those funds with his own money. The People further allege that Respondent violated this rule by failing to place into a trust account the unearned funds Abramovich provided him.

After careful deliberation, we decline to find that Respondent comingled personal and client funds. Our reason is twofold. First, as discussed above, the email exchanges between Respondent and Abramovich in 2020 and 2022 suggest that Respondent may have performed some work in the matter and thus earned a portion of the $15,000.00 retainer, but no more than $5,000.00. Further, Hensley urged Abramovich in an email to send funds to Respondent with haste so Respondent would begin work on pressing matters in the case. From these facts, we conclude sufficient evidence exists that Respondent had performed at least some work on Hensley's matter at the time he received the $15,000.00 retainer or soon thereafter, and that he earned a corresponding portion of the retainer so as to preclude a finding by clear and convincing evidence that he comingled those earned funds with his own money.

Second, with respect to the remainder of the retainer, which we adjudge was certainly no less than $10,000.00, we find that Respondent immediately converted almost all of those funds when he withdrew $9,900.00 from his business account on September 11, 2019.[44] We thus find that the unearned funds did not remain in Respondent's business account long enough to convince us that he comingled the funds with his own money, and we decline to find a rule violation on that basis.[45] Stated differently, we cannot find Respondent comingled client money that he had already converted.

[44] Respondent's counter withdrawal—in essence, an in-person cash withdrawal—causes further concern. Had this been a trust account, Respondent would have violated Colo. RPC 1.15C(a) because under that rule "[c]ash withdrawals from trust accounts . . . are prohibited." Yet Respondent circumvented this prohibition by directing Abramovich to send client funds into his business account rather than his trust account.

[45] To the extent that some unearned funds remained in Respondent's business account after the counter withdrawal, we consider that amount de minimis for purposes of our analysis here, which uses general figures at the cost of precision due to the absence of records.

We agree with the People, however, that Respondent failed to place unearned client funds in a trust account in violation of Colo. RPC 1.15A(a). As an initial matter, we cannot find that Respondent's self-created COLTAF statement proves that he deposited $5,000.00 in his trust account.[46] Respondent did not attempt to elicit testimony from Hensley or Abramovich about the document. Nor did he produce other records that substantiate the document's authenticity or its veracity other than the purported cashier's check for $5,000.00. But we find the cashier's check to be wholly incredible, as discussed above. Most striking, Respondent refused the People's request for metadata that would reveal when he created the digital file. The People thus could neither confirm nor refute the document's creation date or investigate its authenticity. Finally, we note Scherer's testimony that she reviewed Respondent's COLTAF account interest remittance report, which showed that the account likely did not hold interest-generating funds during the period the document purports to show that the funds were in the trust account for any substantial amount of time. Her testimony thus undercuts the document's veracity. We thus find that Respondent's self-created COLTAF statement is not credible evidence on this claim.

Moreover, because Respondent did not produce the required financial records showing that he deposited money for Hensley's matter into his trust account, we infer that he did not make such a deposit.[47] But even if we did accept that Respondent deposited $5,000.00 from the funds into his trust account—which we cannot—Respondent did not place the rest of the funds from the counter withdrawal into a trust account. Nor did he show that he had earned those funds. He thus violated Colo. RPC 1.15A(a).

Colo. RPC 1.15A(b) (Claim II)

The People next allege that Respondent violated Colo. RPC 1.15A(b), which requires a lawyer to promptly deliver to the client any funds that the client is entitled to receive and to render a full accounting of the funds on the client's request. According to the People, Respondent breached both requirements by failing to repay Abramovich's unearned funds and by refusing to comply with Hensley's and Abramovich's demands for an accounting of the funds.

We find that the People have demonstrated Respondent violated Colo. RPC 1.15A(b). As discussed under Claim I, Respondent converted no less than two-thirds of the $15,000.00 retainer and potentially earned no more than $5,000.00. After the representation ended, Respondent pledged via emails to return $10,000.00 to Hensley and render an accounting and, if appropriate,

[46] *See* Ex. B.

[47] We are disappointed that the parties did not make Respondent's trust account records available in this case. That evidence would have resolved the factual dispute about whether Respondent placed Hensley's $5,000.00 in his trust account, as he asserts in his defense, without the need to invoke the adverse inference under C.R.C.P. 242.30(b)(5)(B). Although the People's grounds for declining to subpoena Respondent's trust account records are not unreasonable, and we agree that the burden to produce the records lies squarely on Respondent, we would have preferred to make a factual finding drawn from a document itself, rather than relying on an adverse inference.

provide a further refund shortly thereafter. As evidenced by the September 2022 emails, Respondent returned just $5,000.00; we saw no other credible evidence showing that Respondent returned more than $5,000.00. Because Respondent failed to provide required records, we infer that he only returned $5,000.00. We thus conclude that Respondent failed to return the remaining unearned funds of $5,000.00, despite Abramovich's and Hensley's requests that he do so, violating Colo. RPC 1.15A(b).

Nor can we credit Respondent's assertion that he repaid an additional $1,000.00 to Hensley after returning $5,000.00. Respondent's assertion was unsupported and self-serving, and Hensley denied receiving the payment. Because Respondent failed to produce the records he is required to keep, and because we cannot find any evidence in the record to corroborate his story, we must infer that Respondent did not pay the additional $1,000.00.

We also conclude that Respondent violated Colo. RPC 1.15A(b) when he failed to comply with Hensley's and Abramovich's requests for an accounting of the $15,000.00 retainer. We do not find credible Respondent's claim that he provided an accounting to Hensley after receiving Abramovich's emails in December 2020. Hensley testified that Respondent never provided an accounting or an invoice for either phase of Hensley's representation, despite Hensley's frequent requests that Respondent do so. In addition, Respondent failed to produce a copy of an accounting or a record showing he transmitted an accounting to Hensley. And Respondent also acknowledged that he did not send an accounting to Abramovich, who testified that he never received an accounting for any of the funds from Respondent. With nothing more than Respondent's self-serving say-so to defend against the People's claim, which is bolstered by the adverse inference that the records Respondent is required to keep would support rather than refute the People's claim, we find that Respondent violated Colo. RPC 1.15A(b).

Colo. RPC 1.15D (Claim III)

In their third claim—the final one we address in this opinion—the People allege that Respondent failed to comply with Colo. RPC 1.15D. That rule requires a lawyer to maintain for seven years an appropriate recordkeeping system tracking, among other things, all deposits and withdrawals from the lawyer's trust account, with details of the transactions and the parties; to maintain appropriate records of all deposits in and withdrawals from all other bank accounts maintained in connection with the lawyer's legal services, identifying the date, payor, and description of each item deposited as well as the date, payee, and purpose of each disbursement; to maintain copies of all written communications setting forth the basis or rate for the lawyer's fees as required by Colo. RPC 1.5(b); to maintain copies of all bills issued to clients; and to maintain copies of all bank statements.

The People argue that Respondent breached this rule in two respects. First, the People say that Respondent failed to keep the required records regarding how he earned fees when he represented Hensley. Second, they contend that Respondent failed to keep copies of all written

communications setting forth the basis or rate for the fees to be charged during that representation.

The Hearing Board concludes that Respondent violated Colo. RPC 1.15D by failing to keep required financial records documenting how he earned funds while representing Hensley. Respondent did not present any records reflecting the work he performed or the amounts he purported to garner. That absence, coupled with the adverse inference we must draw under the PDJ's order—in essence, that the missing documents, if produced, would not have favorably reflected on Respondent's recordkeeping practices—convince us that the People have proved this portion of their claim by clear and convincing evidence.

Not so as to the second prong of the People's claim under Colo. RPC 1.15D. The People claim that Respondent failed to keep copies of all written communications setting forth the basis and rate of his fees in the representation, but we cannot find that the People have proved this allegation. Respondent presented Hensley and Abramovich a draft fee agreement that set forth his usual hourly rate and the amount of his retainer. That Abramovich directed Respondent to revise the agreement does not vitiate the communication. Likewise, that neither Abramovich nor Hensley signed the agreement does not mean that Respondent violated this rule. What matters is that father and son were on notice, in writing, of Respondent's hourly rate. We do not find clear and convincing evidence that Respondent violated Colo. RPC 1.15D on this basis.

IV. SANCTIONS

In determining sanctions, we are guided by the framework established by the American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*").[48] Following that framework, we consider the duty the lawyer violated, the lawyer's mental state, and the actual or potential injury caused by the lawyer's misconduct. These three variables yield a presumptive sanction that we may then adjust, at our discretion, based on aggravating and mitigating factors.[49]

ABA Standard 3.0 – Duty, Mental State, and Injury

Duty: Respondent violated the duties he owed to his client and to the profession. He breached his fundamental duty to preserve client property when he failed to keep Hensley's unearned fee in a trust account and when he converted those funds. He also violated his professional duty to maintain required financial records.

Mental State: We have already concluded above that Respondent violated Colo. RPC 8.4(c) by knowingly converting client funds. We also find that he knowingly failed to hold those funds

[48] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019); *In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).
[49] *In re Attorney F.*, 2012 CO 57, ¶ 15 (Colo. 2012).

in a trust account, knowingly failed to return funds to Hensley, and knowingly failed to provide Hensley an accounting. This is so because Respondent had the conscious awareness of his conduct and its nature when he exercised control over Hensley's money.[50] We find that Respondent acted at least knowingly in failing to maintain required financial records, as the evidence before us suggests that he acted to obscure his actions and frustrate oversight.

Injury: Respondent injured Hensley by failing to return Hensley's funds and depriving him of the use of his money. At the hearing, Hensley testified that he applied for reimbursement from the Attorneys' Fund for Client Protection but has not received any money. In addition, Abramovich and Hensley each testified that they believe Respondent's conduct reflected negatively on the legal profession and on lawyers. As such, we find that Respondent has also harmed the profession.

ABA Standards 4.0-8.0 – Presumptive Sanction

Under ABA *Standard* 4.11, disbarment is generally appropriate when a lawyer knowingly converts client property and causes the client injury or potential injury. We also find that Respondent's knowing mishandling of client funds implicates ABA *Standard* 4.12, which calls for suspension when a lawyer knows or should know that he is dealing improperly with client property and causes the client injury or potential injury. Finally, ABA *Standard* 7.2 calls for suspension when a lawyer knowingly engages in conduct that is a violation of a professional duty and injures or potentially injures a client, the public, or the legal system. This *Standard* is implicated by Respondent's knowing failure to maintain required financial records.

Recognizing that the "ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct,"[51] we begin with a presumptive sanction of disbarment.

ABA Standard 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances 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 sanction.[52] As set forth below, we apply six factors in aggravation, assigning average weight to four factors and little weight to two factors. We find also that two factors mitigate Respondent's misconduct and that neither factor merits more than minimal weight.

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[50] *See* ABA *Annotated Standards for Imposing Lawyer Sanctions*, at xix ('"Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.").

[51] ABA *Annotated Standards for Imposing Lawyer Sanctions*, at xx.

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

Aggravating Factors

Prior Disciplinary Offenses – 9.22(a): Respondent has thrice been disciplined in the past. First, in 2014, he was suspended for one year and one day, with all but six months stayed on his successful completion of a three-year period of probation; he was sanctioned for representing clients before the Denver Immigration Court without the proper work authorization required for his immigration status and without notifying his clients that he was unable to represent them.

Second, in April 2020, a hearing board suspended Respondent for one year and one day in two consolidated cases involving misconduct in two client matters. In one matter, he accepted a client's retainer via wire transfer directly into his business account and then treated the funds as his own even though he had not yet earned the retainer, failed to notify the client of the basis of his fee in writing, and knowingly failed to return the client's unearned funds for six months. In another client's matter, Respondent filed frivolous and groundless motions, causing unnecessary delays and slowing the case's progress. He was personally sanctioned $33,000.00 to cover the opposing party's attorney's fees, which he refused to pay until seventeen months later, when he was held in contempt, arrested, and jailed. Much of Respondent's misconduct in these two client matters occurred during his 2014 probation.

Third, in September 2020, another hearing board suspended Respondent for one year and one day for his misconduct in a child support modification matter. Respondent failed to competently and diligently represent his client in that case, ignored disclosure and discovery requirements, and failed to advise his client about the client's obligations to produce complete and timely financial information in the case. He also failed to protect his client's interests by failing to alert the client that he was unable to respond to a pending motion to compel discovery. Finally, Respondent knowingly failed to comply with disciplinary authorities' demands for information during the investigation in that case.

Respondent's disciplinary history reflects a wide range of misconduct as well as one instance of mishandling client funds in a manner like his approach in this case. In the previous matter, the People filed their complaint in July 2018. We thus find that when Respondent directed Abramovich to wire the $15,000.00 retainer to his account in September 2019 and accepted the funds, he was on notice that depositing unearned client money into anything other than a trust account potentially violated professional rules. Accordingly, we apply this factor.

Dishonest or Selfish Motive – 9.22(b): The People argue that this factor should apply because Respondent acted to further his own financial purposes. Respondent's dishonest conduct forms the basis of his violation of Colo. RPC 8.4(c), and we thus decline to penalize him again for the same dishonest conduct. And though Respondent acted dishonestly, we do not find his misconduct was motivated by dishonesty itself. Rather, we find that Respondent has evinced a selfish motive by using Hensley's funds for his own purposes and by refusing to return the funds. We apply this aggravating factor.

Pattern of Misconduct – 9.22(c): Respondent's failure to return Hensley's funds is ongoing, resulting in an ongoing violation. We also discern a pattern in Respondent's failure to provide an accounting despite Hensley's and Abramovich's multiple requests for one and in Respondent's failure to maintain the required records. We therefore apply this factor.

Multiple Offenses – 9.22(d): The People urge us to apply this factor because Respondent engaged in four rule violations. We decline to do so, as the four rule violations either arise from or are related to Respondent's conversion of client funds. Instead, we apply the pattern of misconduct aggravating factor above, which we believe is more fitting.

Bad Faith Obstruction of the Disciplinary Proceeding by Intentionally Failing to Comply with Rules or Orders of the Disciplinary Agency – 9.22(e): We apply this factor even though the People do not seek it. In three respects, Respondent's conduct during this case evinced a disregard for deadlines and a pattern of gamesmanship that rises to the level of bad faith obstruction of the proceeding. First, Respondent failed to meaningfully participate in discovery, although he had many opportunities, even after the close of discovery, to produce the exculpatory records he claimed to have. He never furnished the records.[53] Instead, on at least three occasions, in March, May, and September 2024, he claimed that he was unable to access the records that absolved him because they were in storage or on a crashed hard drive. But Respondent never corroborated this claim or showed that he attempted to retrieve these records.

Second, minutes before the hearing was set to begin, Respondent maneuvered to stay the disciplinary proceeding and to continue the hearing by petitioning the Colorado Supreme Court for review of two orders. Though the two orders issued between one and four months earlier, on April 17, 2024, and August 6, 2024, Respondent waited until the morning of the hearing to file his petition. He did not notify the PDJ or the People that he would seek review of the orders. To the contrary, he represented at the prehearing conference on August 28, 2024, just two weeks before the hearing, that he was ready to proceed to trial.

Third, after the Colorado Supreme Court denied Respondent's petition for review Respondent introduced a document—the photocopy of the cashier's check marked as exhibit K—that had never been disclosed during the case and the People had no opportunity to investigate.

To be clear, we do not penalize Respondent because he sought review of orders issued in this proceeding; that course of action was permissible under the Colorado Rules of Civil Procedure. Nor do we find that any of these acts, standing alone, constitute an intentional, bad faith effort to undermine this case. Taken together, however, they demonstrate a scheme to obfuscate the People's investigation, delay this case's resolution, and engage in trial by ambush that, in our view, implicates this aggravating factor. We thus apply this factor.

[53] Even after discovery closed, Respondent made no discernable effort to file late disclosures or reopen discovery and proffer what might have been found.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): Respondent never wavered from his position that he earned the $15,000.00 retainer. We thus find grounds to apply this factor. But because Respondent readily acknowledged that he owed Hensley money after the representation ended, albeit by insisting that he owes the money as a favor to Hensley rather than because he converted the funds, we find that his conduct is only marginally aggravating.

Vulnerability of Victim – 9.22(h): At the hearing, the People asked us to apply this factor based on Hensley's disabilities. We decline to apply this factor, however, because the People drew no connection between Respondent's misconduct and any vulnerability arising from Hensley's disabilities.

Substantial Experience in the Practice of Law – 9.22(i): Respondent was admitted to practice law in Colorado in 2006. We apply this factor and give it minimal weight in recognition that Respondent should have learned from his prior disciplinary offenses during that time.

Mitigating Factors

Absence of Dishonest or Selfish Motive – 9.32(b): Respondent argues this factor applies and insists that he never acted dishonestly. To the contrary, he asserts, "I sought to assist [the Hensleys], even to my own detriment." But we concluded that Respondent converted at least $10,000.00 of the retainer. We also determined above that Respondent was motivated by selfishness. As such, we do not apply this mitigating factor.

Personal and Emotional Problems – 9.32(c): Respondent testified that he experienced personal troubles in 2019 around the time he began representing Hensley, including the dissolution of his marriage, the death of a close family member, and the imposition of discipline in a previous matter. Though Respondent did not present any objective evidence supporting his account, we exercise our discretion to give Respondent the benefit of the doubt. But given the lack of objective corroborative evidence and because we struggled to find Respondent credible in other areas, we cannot find that this factor warrants more than minimal weight.

Timely Good Faith Effort to Make Restitution or to Rectify Consequences of Misconduct – 9.32(d): Respondent urges us to apply this factor considering his efforts to return $10,000.00 to Hensley. But we find that Respondent converted at least $10,000.00 of Hensley's funds and returned $5,000.00 to Hensley sometime between December 2020 and September 2022. Because Respondent's restitution efforts, if any, were untimely, and because Respondent's obligation remains outstanding, we decline to credit Respondent by applying this factor.

Full and Free Disclosure to Disciplinary Board or Cooperative Attitude Toward Proceedings – 9.32(e): Respondent asserts that he has cooperated in this matter by appearing at status conferences and the hearing and by engaging with the People and providing them the documents they requested. As we describe above, however, the record in this matter does not support

Respondent's assertion and in fact demonstrates that Respondent obstructed the proceeding. Accordingly, we do not apply this mitigating factor.

Character or Reputation – 9.32(g): Respondent offered testimony of his volunteerism but did not provide objective evidence to corroborate his account. We therefore apply this factor but give it minimal weight.

Physical disability – 9.22(h): Respondent credibly testified that he suffered a concussion in March 2022 during a vehicle accident that affected his ability to work, delaying his repayment to Hensley. But the accident occurred more than two years after Respondent converted Hensley's funds and more than a year after Hensley and Abramovich first requested that Respondent return the funds and provide an accounting. As such, there is no causal nexus connecting Respondent's injury to his misconduct in this case, and we thus do not apply this factor. For the same reasons, we decline to apply the mitigating factor of timely good faith effort to make restitution.

Analysis Under ABA Standards and Case Law

The Colorado Supreme Court directs hearing boards to exercise discretion in imposing a sanction because "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[54] As such, we determine the appropriate sanction for a lawyer's misconduct on a case-by-case basis, looking to the ABA *Standards* for guidance in the exercise of that discretion. The ABA *Standards* give us a theoretical framework that provides for "the flexibility to select the appropriate sanction in [a] particular case" after carefully considering the applicable aggravating and mitigating factors.[55] Thus, while prior decisions regarding the imposition of sanctions for lawyer misconduct can be persuasive, we are free to distinguish those cases and deviate from the presumptive sanction when appropriate.

We begin our analysis with the presumptive sanction of disbarment. Because the aggravating factors in this case significantly preponderate over the mitigating circumstances, we see no basis to deviate from the presumptive sanction, and we thus conclude that disbarment is the appropriate sanction here under the ABA *Standards*.

Prior cases likewise point us to disbarment. In Colorado, a lawyer's knowing misappropriation of funds, whether belonging to a client or third party, invariably warrants disbarment unless extraordinary mitigating factors apply.[56] This principle recognizes that "[m]issue

[54] *Attorney F.*, ¶ 20 (*quoting In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[55] *Id.* ¶ 3.
[56] *See Varallo*, 913 P.2d at 10-11; *People v. Lavenhar*, 934 P.2d 1355, 1359 (Colo. 1997) (collecting cases); *see also People v. Heaphy*, 470 P.3d 728, 729 (Colo. O.P.D.J. 2015) (disbarring a lawyer who knowingly converted settlement funds, comingled his client's funds with his own, failed to act

of funds by a lawyer strikes at the heart of the legal profession by destroying public confidence in lawyers."[57]

In this matter, Respondent accepted Abramovich's $15,000.00 as a retainer for legal services he pledged to perform for Hensley. But Respondent failed to place the unearned portion of the funds—no less than $10,000.00—into a trust account. He also consumed the unearned funds the day after he received them. Respondent has not returned all the unearned funds to Hensley, nor has he provided an accounting of those funds despite multiple requests from Hensley and Abramovich. In addition, Respondent's failure to keep required financial records from the representation and his conduct in defending this matter convince us that he sought to frustrate efforts to investigate and oversee his conduct. In line with the applicable disciplinary standards and prior decisions with similar facts, we readily conclude that Respondent's misconduct warrants disbarment.

There are other factors that we consider that lead us to disbarment. Respondent has been through the disciplinary process three times before. Not only has prior discipline failed to adequately protect the public, but Respondent's continued violations resulting from similar misconduct concerns us. In short, if Respondent had adequately learned lessons from his prior mistakes, we would not expect those mistakes to reoccur. Finally, swayed in part by Respondent's disciplinary history, we are concerned that our failure to impose the presumed sanction of disbarment would erode the public's confidence in the legal profession.

Finally, we address restitution, which is defined as "the return of fees, money, or other things of value that were paid or entrusted to the lawyer."[58] We find by clear and convincing evidence that restitution in the amount of $10,000.00 is appropriately ordered to Hensley. This amount considers Respondent's previous payment of $5,000.00. Though we found Respondent may have done some work to earn a portion of the retainer, he failed to produce any records to account for that work. We issue this restitution order bearing in mind the arrangement Respondent twice made with Abramovich and Hensley: that he would return $10,000.00 and later refund the remainder of the unearned fees with an accounting of the work he accomplished. But Respondent neither provided such an accounting to Abramovich or Hensley, nor did he produce any documentation of his work in this proceeding. In harmony with the adverse inference we apply, we find that if that documentation had been produced, it would not have favored Respondent. Thus, because the $10,000.00 was entrusted to Respondent, and because Respondent failed to either safeguard the fees or account for their use, restitution is appropriate. Accordingly, we order Respondent to pay Hensley $10,000.00 in restitution.

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diligently or respond to his client's communications, and ultimately paid full restitution to his client plus interest after his law license was threatened with immediate suspension).

[57] *People v. Buckles*, 673 P.2d 1008, 1012 (Colo. 1984).

[58] C.R.C.P. 241.

V. CONCLUSION

Respondent violated a core responsibility to protect client funds by failing to deposit unearned funds into a trust account and by converting those funds. He did not earn or return all of the client's money, and he deprived the client of an accounting of his funds. Moreover, Respondent deprived disciplinary authorities the opportunity to investigate his conduct by failing to maintain or produce required financial records from the representation. Respondent's knowing misconduct injured his client and tarnished the reputation of the profession. We find that nothing short of disbarment is an appropriate remedy.

VI. ORDER

The Hearing Board therefore **ORDERS**:

1. **ANSELM ANDREW EFE**, attorney registration number **38357**, is **DISBARRED.** The disbarment will take effect on issuance of an "Order and Notice of Disbarment."[59]

2. Respondent **MUST** pay restitution totaling $10,000.00, **no later than Thursday, December 12, 2024**, to Joshua Hensley, care of the Office of Attorney Regulation Counsel.

3. Respondent **MUST** timely 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.

4. Within fourteen days of issuance of the "Order and Notice of Disbarment," Respondent **MUST** file an affidavit with the PDJ 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.

5. The parties **MUST** file any posthearing motions **no later than Thursday, November 21, 2024**. Any response thereto **MUST** be filed within seven days thereafter.

6. 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.

7. Respondent **MUST** pay the reasonable costs of this proceeding. The People **MUST** submit a statement of costs **no later than Thursday, November 21, 2024**. Any response challenging the reasonableness of those costs **MUST** be filed within seven days after.

[59] 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 7th DAY OF NOVEMBER, 2024.

BRYON M. LARGE
PRESIDING DISCIPLINARY JUDGE

REBECCA A. PESCADOR
HEARING BOARD MEMBER

DAVID N. SIMMONS
HEARING BOARD MEMBER