***People v. Michelle Lynn Sherer*. 18PDJ077. June 20, 2019.**

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Michelle Lynn Sherer (attorney registration number 42639), effective July 25, 2019.

In one client representation, Sherer was retained in a divorce matter. She met just once with the client, and she completed almost no substantive work. She then fell out of contact, abandoning the client and refusing to provide a refund or an accounting of her time. In another client matter, Sherer charged unreasonable fees while failing to act diligently or to reasonably communicate with her client. Further, she made knowing misrepresentations to her client and the opposing party during the representation. She also failed to substantively respond to her clients' allegations in this disciplinary matter.

Through this conduct, Sherer violated Colo. RPC 1.3 (a lawyer shall act with diligence and promptness when representing a client); Colo. RPC 1.4(b) (a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation); Colo. RPC 1.5(a) (a lawyer shall not make an agreement for, charge, or collect an unreasonable fee); Colo. RPC 1.16(d) (upon termination, a lawyer must take steps to protect a client's interests, including by giving reasonable notice to the client and refunding unearned fees); Colo. RPC 1.15A(b) (a lawyer who receives funds or property of a client must promptly deliver to the client any funds or property that the client is entitled to receive and, on request, provide an accounting as to that property); Colo. RPC 1.15A(a) (a lawyer must hold any client property separate from the lawyer's own property); Colo. RPC 8.1(b) (a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority); and Colo. RPC 8.4(c) (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. 251.31. 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:** MICHELLE LYNN SHERER, #42639	Case Number: **18PDJ077**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)	

In one client representation, Michelle Lynn Sherer ("Respondent") was retained in a divorce matter. She met just once with the client, and she completed almost no substantive work. She then fell out of contact with the client, abandoning the client and refusing to provide a refund or an accounting of her time. In another client matter, Respondent charged unreasonable fees while failing to act diligently and to reasonably communicate with her client. Further, she made knowing misrepresentations to her client and the opposing party during the representation. Respondent also failed to substantively respond to the clients' allegations in this disciplinary matter. Respondent's many instances of misconduct support a decision of disbarment.

I. PROCEDURAL HISTORY

On December 7, 2018, Jacob M. Vos, Office of Attorney Regulation Counsel ("the People"), filed a complaint with the Presiding Disciplinary Judge ("the Court"). The same day, the People sent copies of the complaint to Respondent via certified mail at her registered business address.[1] When the due date for Respondent's answer had passed, the People emailed her on February 5, 2019, reminding her to answer.[2]

On February 22, 2019, the People moved for entry of default. The Court granted the People's default motion in March 2019. 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.[3]

[1] *See* exhibit 2 for Respondent's registered addresses.
[2] On January 18, 2019, the Court granted Respondent's motion for an extension of time, and allowed her until January 31, 2019, to file her answer.
[3] *See* C.R.C.P. 251.15(b); *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

At the sanctions hearing held under C.R.C.P. 251.15(b) on June 4, 2019, Vos represented the People. Respondent did not appear. During the hearing, the People's exhibits 1-3 were admitted into evidence,[4] and the Court heard testimony from Rose Garland.

II. ESTABLISHED FACTS AND RULE VIOLATIONS

Respondent took the oath of admission and was admitted to practice law in Colorado on October 25, 2010, under attorney registration number 42639. She is thus subject to the Court's jurisdiction in this disciplinary proceeding.[5]

Garland Matter

Rose Garland retained Respondent in May 2017 to handle her divorce, paying Respondent a $5,500.00 retainer. The two women met just once. Garland wanted assistance to complete her financial affidavit, and she had questions about a trust that had been set up in her husband's name. Respondent failed to advise Garland about either issue.

Garland's case progressed slowly over the next few months: Respondent sent Garland a draft petition on August 17, 2017, but the petition reflected very little substantive work. Respondent accomplished little else on the case. On August 17, 2017, Garland emailed Respondent, asking for an accounting of the time spent on her matter and terminating the representation. Respondent did not respond for a month. She then promised to file for Garland's divorce by October 1, 2017. She failed to do so. Thereafter, Garland requested on numerous occasions the return of the balance of her retainer. Respondent never produced an accounting of her fees, refunded the balance of Garland's funds, or returned Garland's files. Garland ultimately filed for divorce pro se.

Between May and October 2017, Respondent's trust account balance did not hold more than $2,500.00.

Respondent has sporadically been in touch with the People about this matter, but she failed to answer calls for scheduled telephone interviews. Likewise, she failed to substantively respond to Garland's allegations.

Through this misconduct, Respondent violated Colo. RPC 1.3, which provides that a lawyer shall act with diligence and promptness when representing a client; Colo. RPC 1.4(b), which provides that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation; Colo. RPC 1.16(d), which provides that a lawyer must take steps upon termination to protect a client's interests, including by giving reasonable notice to the client and refunding unearned fees; Colo. RPC 1.15A(b), which provides that a lawyer who receives funds or property of a client

[4] These exhibits were accompanied by "The People's Amended Exhibit List," filed at the hearing.
[5] *See* C.R.C.P. 251.1(b).

must promptly deliver to the client any funds or property that the client is entitled to receive and, on request, provide an accounting as to that property; and Colo. RPC 1.15A(a), which provides that a lawyer must hold any client property separate from the lawyer's own property.

Davis Matter

Respondent began representing Laura Davis in her domestic relations case in April 2017. Around that time, $4,285.06 in unearned fees were transferred from Ms. Davis's former attorney to Respondent. Respondent handled the case on an hourly fee basis, but she issued her last fee invoice in the case on May 9, 2017. That invoice, which accurately reflected a credit for the transferred funds, showed an outstanding balance of $2,684.25.

At the time Respondent began representing Ms. Davis, the Davises were two weeks away from a relocation and child support hearing. Mr. Davis was represented by counsel. On June 22, 2017, the court issued an order denying Mr. Davis's relocation request. Mr. Davis's counsel withdrew after the court issued its order; Mr. Davis proceeded in the matter pro se. Respondent continued to represent Ms. Davis.

Mr. Davis emailed Respondent a number of times about payment for childcare and other collateral issues. Respondent was slow to respond. On September 7, 2017, Respondent emailed Mr. Davis, "I will respond to your several emails tomorrow. We have filed a motion regarding parenting time and needless attorney fees my client has encountered. Please let me know if you retain an attorney. I am in the process of recouping what my client has lost."[6] But the email was inaccurate: Respondent had not filed any such motion before she sent the email. Nor did she file such a motion after she sent the email.

Respondent was also slow to communicate with her client, Ms. Davis. The court issued a support order in mid-September. Respondent told Ms. Davis that she would appeal or move to modify the support order, but she did not do so.

Mr. Davis continued to contact Respondent in October 2017 about Ms. Davis's failure to pay her childcare and child support obligations. Respondent responded only sporadically. In November 2017, Respondent received notice that Ms. Davis's wages would be garnished to pay her child support obligations pursuant to the September order. Respondent did not inform Ms. Davis of the notice.

Respondent was only intermittently in contact with Ms. Davis in December 2017 and January 2018. Ms. Davis understood that Respondent planned to move to set aside or modify the support order and that, in the meantime, Ms. Davis should not pay child support pursuant to the September order. Respondent never filed a motion to set aside or modify the September support order, however.

[6] Compl. ¶ 42.

On December 31, 2017, Respondent informed Ms. Davis that she had "cleared" Ms. Davis's bill. In early February 2018, Ms. Davis learned that her wages were being garnished. Also around that time, Respondent informed Ms. Davis that she was withdrawing from the representation. Respondent then informed Ms. Davis in mid-February 2018 that she had moved to withdraw, and that Ms. Davis owed her an additional $500.00 in attorney's fees. Respondent had not, in fact, moved to withdraw. In March 2018, Respondent emailed Mr. Davis to inform him that she no longer represented Ms. Davis, and that he should not contact her further.

In April 2018, Ms. Davis learned that her driver's license would be suspended if she did not pay $1,789.35 in past-due child support. In early May 2018, Ms. Davis reached out to Respondent a number of times to ask her to withdraw. Ms. Davis had attempted to file a motion to modify child support pro se, but the court would not allow Ms. Davis to proceed pro se because, according to the court file, she was still represented by counsel. At that point, Ms. Davis had not received any of the documents filed in the case after September 2017 because they were served on Respondent, not Ms. Davis. Respondent never moved to withdraw. So, on May 14, 2018, Ms. Davis notified the court that her attorney-client relationship with Respondent had ended. The court granted the motion on June 1, 2018. Meanwhile, Ms. Davis had missed an initial status meeting held on May 31, 2018, because she was not served with notice of the hearing, and Respondent did not tell her about the hearing.

Respondent never issued Ms. Davis an accounting of her fees, and she never returned Ms. Davis's client file. Ms. Davis paid Respondent $5,849.25 in total.

Through this conduct, Respondent violated Colo. RPC 1.3; Colo. RPC 1.4(b); Colo. RPC 1.5(a), which provides that a lawyer shall not make an agreement for, charge, or collect an unreasonable fee; Colo. RPC 1.16(d); and Colo. RPC 8.4(c), which provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

By failing to respond to the People's requests for information about the Garland and Davis matters, Respondent also violated Colo. RPC 8.1(b), which provides that a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[7] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[8] When imposing a sanction after a finding of lawyer misconduct, the

[7] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).
[8] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

Court must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

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

Duty: Respondent was derelict in fulfilling the duties of diligence, communication, and honesty she owed her clients. She also abdicated her professional duties by mishandling client funds, failing to account for those funds, and declining to respond substantively to disciplinary authorities when called to do so.

Mental State: The order of default establishes that Respondent knowingly misrepresented material facts to both her client and the opposing party. The Court also finds sufficient evidence to conclude that Respondent knowingly violated the remaining rules at issue.

Injury: Respondent accepted a $5,500.00 retainer from Garland, who expected sound legal advice and a prompt and uncomplicated divorce. Instead, Garland received from Respondent sporadic and untimely communication, no work of any value, and a silent refusal to return her unearned retainer. As Garland explained, she grew very frustrated with Respondent's behavior because she longed to move on in her personal life. This consideration, coupled with her lack of access to additional funds to hire another lawyer, led her to proceed without counsel, a decision that she ultimately concluded was detrimental to her financial interests. Garland testified that Respondent's treatment made her feel "insignificant" and generated stress, which compounded the stress she was already dealing with in her divorce. Garland stated that Respondent violated her trust and took advantage of her while she was in a vulnerable position. The Court is convinced that Garland suffered serious financial injury insofar as she lost her retainer; potentially serious injury insofar as she was deprived of legal counsel about her possible rights in the divorce; and actual injury from the emotional harm caused by Respondent's neglect.

Ms. Davis, who submitted a witness statement, explains that her misplaced reliance on Respondent seriously harmed her financially, legally, and emotionally. Because she trusted Respondent's misrepresentation that a motion to modify child support obligations had been filed, and because she acted on Respondent's reassurance that she need not make child support payments pending a ruling on the motion, Ms. Davis got "so far behind" on her child support that her total arrearage grew to over $9,000.00; her tax refunds were forwarded directly to Mr. Davis; she was threatened with the loss of her driver's license, state and national park passes, and outdoor licenses; and her paychecks were garnished.[9] As a result of the garnishment, Ms. Davis states, she has had her kids for "five plus months with no financial assistance" from Mr. Davis, who continues to receive garnishment payments.[10] Ms. Davis also avers that she was told by Child Support Services that insurance money from

[9] Ex. 3 at 2.
[10] Ex. 3 at 2.

a recent automobile accident would go to Mr. Davis, rather than to repairs of her car—the the only car she has to drive to work or to transport her children: "This has caused me emotional stress, a lot of time trying and failing to get these issues addressed appropriately, and the necessity of working more jobs and more hours to supplement my income due to the garnishments."[11] As Ms. Davis describes:

> This has affected me emotionally, but also personally in multiple areas of my life. It has affected me on a grand level financially making back payments on child support, not having tax returns, all of my savings and overtime paychecks gong to pay for legal services, and going into the negative having to take time off of work to try to fix the things [Respondent] neglected during working business hours. It has affected my children, their education, as well as[] being able to be given some of the things that they have needed that I was unable to afford.[12]

Ms. Davis concludes that Respondent caused her "heartache and strain," noting that the child support matter "was out [o]f my hands, I had no voice, no full picture of the depth it had gotten to, and I was unable to fix the unfixable problems that she got me into when she was still 'representing me.'"[13]

ABA *Standards* 4.0-7.0 – Presumptive Sanction

Disbarment is the presumptive sanction under ABA *Standard* 4.41, which applies when a lawyer knowingly fails to perform services for a client, causing that client serious or potentially serious injury.

Respondent's knowing misrepresentations are addressed by ABA *Standard* 4.62, which calls for suspension when a lawyer knowingly deceives a client, thereby injuring or potentially injuring the client. The Court also looks to ABA *Standard* 4.12, which provides for suspension in cases where a lawyer knows or should know that she or he is dealing improperly with client property, causing injury or potential injury to the client.[14] And ABA *Standard* 7.2 likewise calls for suspension when a lawyer knowingly engages in conduct that

[11] Ex. 3 at 2.
[12] Ex. 3 at 3.
[13] Ex. 3 at 3.
[14] In line with the entry of default as to the Colo. RPC 1.15A(a) claim, the Court concludes that Respondent knew or should have known that she dealt improperly with client property, thereby causing injury. Despite the People's urging, the Court will not find that Respondent knowingly converted client property, since a claim under Colo. RPC 8.4(c)—the exclusive vehicle in Colorado for claims of knowing conversion—was not lodged in the complaint, which itself was never amended. In law, as in other matters, one must say what is meant, and mean what is said. The Court declines to further entangle this state's nuanced jurisprudence concerning the grievous charge of knowing conversion by transforming a Colo. RPC 1.15A(a) claim (typically treated in case law as a negligent conversion) into a knowing conversion claim by dint of the default process. In any event, the Court cannot clearly and convincingly find, based on the limited evidence and testimony adduced at the sanctions hearing, that Respondent took client money, *knowing* it was client money, and *knowing* that the client had not authorized the taking. *See People v. Varallo*, 913 P.2d 1, 11 (Colo. 1996) (quoting *In re Noonan,* 506 A.2d 722, 723 (N.J. 1986)).

violates a professional duty—here, failing to protect client interests on termination of the attorney-client relationship and failing to respond to the People's inquiries—and, as a result, causes injury or potential injury to a client, the public, or the legal profession.

The Court is particularly cognizant under these circumstances that the "[t]he ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct."[15] Because the proven claim of abandonment carries with it a presumption of disbarment, and the many other types of grave misconduct established in the order of default justify in several separate ways the application of a presumptive sanction of suspension, the Court selects disbarment as the starting point for the remainder of its sanctions analysis.

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.[16] Three aggravating factors are present here: Respondent's selfish motive, her multiple offenses, and her bad faith obstruction of the disciplinary proceeding by failing to comply with orders of the disciplinary authority.[17] Respondent did not appear at the hearing, so the Court knows of just one applicable mitigating factor: her lack of prior discipline.[18]

Analysis Under ABA *Standards* and Colorado Case Law

The Court recognizes the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[19] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[20] 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.

Here, the ABA *Standards* call for disbarment as a presumptive sanction, and case law supports imposition of that discipline.[21] Although significant mitigating factors may

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[15] ABA *Annotated Standards for Imposing Lawyer Sanctions* xx.
[16] *See* ABA *Standards* 9.21 & 9.31.
[17] ABA *Standards* 9.22(b), (d)-(e).
[18] ABA *Standard* 9.32(a).
[19] *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).
[20] *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[21] *See People v. Jenks*, 910 P.2d 688, 692 (Colo. 1996) (disbarring a lawyer who "accepted fees from a number of clients, then abandoned them, causing some of his clients substantial harm"); *People v. Fritsche*, 897 P.2d 805, 807 (Colo. 1995) (disbarring a lawyer who effectively abandoned clients and disregarded disciplinary proceedings); *People v. Williams*, 845 P.2d 1150, 1152 (Colo. 1993) (disbarring a lawyer who neglected a legal

overcome the presumption of disbarment, the one applicable mitigator does not justify reducing the presumptive sanction in this circumstance, particularly given the several distinct types of misconduct Respondent committed and the quantum of harm she caused her two clients. Respondent should be disbarred.

IV. CONCLUSION

Respondent abandoned two clients in the throes of their divorce proceedings. She neglected their cases, failed to communicate with them, and never provided either client with an accounting or a return of unearned funds. In one case, she knowingly misrepresented key facts to her client and the opposing party, causing her client potentially serious injury. And although Respondent was in sporadic contact with disciplinary authorities, she never answered their repeated requests for a substantive response to the charges. Considering the totality of her misconduct, the Court concludes that Respondent is not fit to hold a law license and should be disbarred.

V. ORDER

The Court therefore **ORDERS**:

1. **MICHELLE LYNN SHERER**, attorney registration number **42639**, will be **DISBARRED** from the practice of law. The **DISBARMENT SHALL** take effect only upon issuance of an "Order and Notice of Disbarment."[22]

2. To the extent applicable, Respondent **SHALL** promptly comply with C.R.C.P. 251.28(a)-(c), concerning winding up of affairs, notice to parties in pending matters, and notice to parties in litigation.

3. Respondent also **SHALL** file with the Court, within fourteen days of issuance of the "Order and Notice of Disbarment," an affidavit complying with C.R.C.P. 251.28(d), requiring an attorney to file an affidavit with the Court setting forth pending matters and attesting, *inter alia*, to notification of clients and other jurisdictions where the attorney is licensed.

4. The parties **MUST** file any posthearing motions **on or before Friday, July 5, 2019**. Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **on or before Thursday, July 11, 2019**. Any response thereto **MUST** be filed within seven days.

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matter, failed to return a client's retainer, evaded service of process, failed to respond to a request for investigation, and abandoned his practice).

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

6. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a statement of costs **on or before Friday, July 5, 2019**. Any response thereto **MUST** be filed within seven days.

7. Respondent **SHALL** pay Rose Garland restitution in the amount of $5,500.00 **on or before Thursday, July 18, 2019**.

DATED THIS 20th DAY OF JUNE, 2019.

Original Signature on File

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Copies to:

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