***People v. Daniel Lee English*. 21PDJ030. April 4, 2022**.

A hearing board suspended Daniel Lee English (attorney registration number 01731) for eighteen months, effective May 9, 2022. On October 28, 2022, the Colorado Supreme Court affirmed the order without opinion. To be reinstated to the practice of law in Colorado, English must prove by clear and convincing evidence that he has been rehabilitated, has complied with all disciplinary orders and rules, and is fit to practice law.

From 2018 through 2020, English commingled his personal property with clients' property by keeping his earned fees, unearned client funds, and settlement funds in his trust account. He also transferred his personal funds into his trust account and used that account as an operating account. English did not maintain required financial records during that time.

In 2018, English represented a client in a personal injury case. English settled the matter and accepted a $40,000.00 settlement check on his client's behalf. English should have held in trust $9,885.00 from the settlement funds to pay his client's related medical lien but instead nearly depleted his trust account without paying the lien. During the representation, English loaned his client $7,000.00 in multiple tranches but did not provide his client with written terms for the loans or obtain his client's written consent to the terms of the transactions. English recouped the money he loaned to his client from the settlement proceeds. In 2019, English destroyed his client's file. During the disciplinary proceeding, English did not provide disciplinary authorities with financial records that he was required to keep, including a written statement setting forth the basis or rate for the fee he charged his client.

Through his conduct, English violated Colo. RPC 1.8(a) (a lawyer must not enter into a business transaction with a client unless the client is advised to seek independent legal counsel and the client gives written informed consent to the transaction); Colo. RPC 1.8(e) (a lawyer must not provide financial assistance to a client in connection with a pending or contemplated litigation); Colo. RPC 1.15A(a) (a lawyer must hold client property separate from the lawyer's own property); Colo. RPC 1.15A(c) (a lawyer must keep separate any property in which two or more persons claim an interest until there is a resolution of the claims); and Colo. RPC 1.15D (a lawyer must maintain trust account records).

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:** DANIEL LEE ENGLISH, #01731	Case Number: **21PDJ030**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)	

Daniel Lee English ("Respondent") knowingly mishandled client and third-party property by commingling personal funds in his trust account, which he treated as if it were his operating account. He did not keep required financial and trust account records and failed to safeguard money in which a third party had claimed an interest. In addition, Respondent provided impermissible loans to his client and did not administer the advisements required for lawyers involved in business transactions with clients. Respondent's misconduct warrants an eighteen-month suspension.

I. PROCEDURAL HISTORY

On May 21, 2021, Erin R. Kristofco of the Office of Attorney Regulation Counsel ("the People") filed a complaint against Respondent with Presiding Disciplinary Judge William R. Lucero ("the PDJ"), alleging violations of Colo. RPC 1.8(a) and (e) (Claim I); Colo. RPC 1.15A(a) and (c) (Claim II); Colo. RPC 1.15D (Claim III); and Colo. RPC 8.4(c) (Claim IV).[1] Respondent answered on June 17, 2021. After continuing the hearing at Respondent's request, the PDJ reset the hearing for February 4, 2022.

On January 7, 2022, the PDJ issued an "Order Granting in Part and Denying in Part Complainant's Motion for Summary Judgment" and entered judgment on Claim I, Claim II as to the violation of Colo. RPC 1.15A(c), and Claim III. The PDJ denied summary judgment on Claim II as to the alleged violation of Colo. RPC 1.15A(a) and on Claim IV.

On February 4, 2022, a Hearing Board comprising the PDJ, lawyer Christine M. Hernandez, and citizen member Khánh Q. Vũ held a remote disciplinary hearing under C.R.C.P. 251.18 via the Zoom videoconferencing platform. Kristofco represented the People,

[1] Though C.R.C.P. 242 took effect on July 1, 2021, the Hearing Board decides this case under C.R.C.P. 251, which was in effect when the People filed the complaint in this matter.

and Troy R. Rackham appeared as Respondent's counsel. The PDJ admitted the parties' stipulated exhibits S2-S3, S5-S6, S12, and S14-S17; suppressed stipulated exhibits S1, S4, S7-S11, and S13;[2] and Respondent's exhibits R3 and R5. The Hearing Board received testimony from Respondent, Melanie Scott, and the People's investigator, Donna Scherer.

II. FINDINGS OF FACT

The findings of fact are drawn from testimony offered at the hearing, evidence from the exhibits admitted at the hearing, and the undisputed material facts set forth in the PDJ's summary judgment order. Respondent was admitted to the practice of law in Colorado on April 26, 1972, under attorney registration number 01731.[3] He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[4]

The Carrales Case and the Denver Spine Lien

Respondent represents parties with personal injury claims. In 2018, he entered into a lawyer-client relationship with David Carrales.[5] Carrales had been in a motor vehicle accident in January of that year.[6] Respondent represented Carrales in the resulting personal injury lawsuit, advising the at-fault driver's insurer, Farmers, that he represented Carrales.[7] Respondent testified that he entered into a written contingency fee agreement ("CFA") with Carrales, following his "custom, habit, and routine" for personal injury cases. He placed the CFA in his file for Carrales, he said, along with other records from the case.

Carrales began treatment for his injuries from the accident at Denver Integrated Spine Center ("Denver Spine") in January 2018.[8] That month, Carrales agreed with Denver Spine that he would be "directly and fully responsible to [Denver Spine] for all bills submitted for services rendered," regardless of whether he received any settlement, judgment, or verdict on his claim.[9] The agreement provided a signature line for a patient's

[2] On February 1, 2022, the parties filed the "Parties[']' Stipulation Regarding How Suppressed Exhibits Will Be Handled in the Hearing Board's Opinion," which specifies "that the [H]earing [B]oard opinion can refer to suppressed exhibits generally, and can quote suppressed exhibits but only quote specific statements using client initials—with the exception of client Daniel Carrales." The stipulation further provides that the opinion should refer to Respondent's clients by initials only, with the exception of Carrales. The PDJ **APPROVES** the parties' stipulation.

[3] Summ. J. Order at 3.

[4] Summ. J. Order at 3.

[5] Summ. J. Order at 3. Respondent testified that he previously represented Carrales in several other personal injury matters.

[6] Summ. J. Order at 3; Ex. S7.

[7] Summ. J. Order at 3; Ex. S8.

[8] Summ. J. Order at 3.

[9] Ex. R3 at 1.

lawyer to promise "to withhold and pay such sums from the patient's portion of any settlement, judgment, or verdict," but Respondent did not sign the form.[10]

Melanie Scott is the practice administrator for Denver Spine. Scott explained that she works with patients, lawyers, and insurance adjusters to coordinate treatment and billing. She testified that she sent a copy of Carrales's signed agreement with Denver Spine to Respondent but did not receive a copy back from him. She indicated that failing to receive signed copies of the agreement from lawyers was not unusual, stating, "Rarely do lawyers sign these."

Scott recalled that Respondent left a message with Denver Spine on March 21, 2018, requesting an itemized billing statement for Carrales's treatment.[11] She emailed Respondent the next day, attaching the invoice as of March 22, 2018.[12] Records show that Denver Spine billed $5,455.00 for Carrales's treatment through that date.[13] Respondent recalled that the amount was "close to $5,000.00."

On August 27, 2018, Denver Spine sent all of its final records and bills for Carrales's treatment to Respondent, who received the documents.[14] Denver Spine's ledger for the treatment shows that it billed a total of $9,885.00 through June 27, 2018.[15] By October 25, 2018, Respondent had reviewed Carrales's medical records and prepared a demand letter to Farmers that he sent to Carrales for review.[16] The demand letter stated that the amount Denver Spine billed for Carrales's treatment was only $5,455.00.[17] Respondent testified that he sent the demand letter to Farmers.

In November 2018, Respondent settled Carrales's case against Farmers for $40,000.00.[18] When Farmers released the settlement check, Respondent agreed to "hold in trust funds to satisfy any and all liens."[19] He testified that he understood his agreement to mean that he would hold funds from the settlement in trust for unpaid treatment providers in Carrales's matter. He deposited the $40,000.00 in his trust account on November 29, 2018.[20]

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[10] Summ. J. Order at 3; Ex. R3 at 2. Respondent testified that the healthcare provider Personicare also provided Carrales medical treatment. Unlike Denver Spine's agreement, he said, he signed Personicare's agreement and agreed to distribute funds to the health care provider to pay for Carrales's treatment. *See also* Summ. J. Order at 3.

[11] Ex. S3.

[12] Ex. S2 at 175.

[13] Ex. S11 at 36.

[14] Summ. J. Order at 4; Ex. S16 at 28-33.

[15] Summ. J. Order at 4; Ex. S11 at 38.

[16] Summ. J. Order at 4; Ex. S12.

[17] Ex. S13 at 44. Denver Spine is identified as "DISC" in the Carrales documents.

[18] Summ. J. Order at 4; Ex. S14.

[19] Ex. S6.

[20] Summ. J. Order at 4; Ex. S1 at 455. The last four digits of Respondent's trust account number are 5059. Respondent clarified that the account is a COLTAF account.

Respondent testified that Carrales's share from the settlement totaled $13,065.00.[21] He said that he paid Carrales in two checks totaling $12,565.00: check number 3318 for $4,500.00, dated November 29, 2018; and check number 3315 for $8,065.00, dated November 30, 2019.[22] He offset Carrales's share by $500.00, he said, because he had advanced that amount to Carrales at an earlier date. As for his own fee, he testified that he kept $13,332.00 from the settlement based on the CFA.[23] On the draft settlement sheet for the case, Respondent wrote that the medical liens that Denver Spine and Carrales's other treatment providers held totaled $6,603.00.[24]

On December 31, 2018, the closing balance of Respondent's trust account was $14.90.[25] But he should have been holding at least $9,885.00 in trust to pay Denver Spine's lien.[26] At the hearing, he could not explain his failure to pay the lien, stating, "Honestly, today sitting here, I cannot give . . . an answer why I overlooked that payment. Period. I have no excuse. I cannot defend myself. I simply overlooked it." He speculated that Carrales received the funds that should have been held for Denver Spine.

Scott testified that she requested from Respondent a status update on Carrales's case in February 2019.[27] Respondent did not respond to her request, she said, nor did he return her telephone messages. Respondent disputed Scott's testimony, claiming not to recall seeing any communications from her about the lien before 2020. She "never" called him about the matter; if she had, he said, he would have returned her calls.

In February 2020, Scott contacted Carrales, who informed her of the settlement. She emailed Respondent on February 12, 2020—over a year after she had asked for a status update on the case—informing him that she knew the case had settled, requesting payment of the balance of $9,885.00 within ten days, and stating that she would "move forward via the attorney regulatory agency if this is not resolved immediately."[28] Respondent, who testified that he was "in shock" when he learned the bill was unpaid, replied to Scott the next day, writing that "[his] records reflect that the bill was, in fact, paid."[29] But he did not actually review his records before responding. He testified, rather, that he "felt strongly"

[21] *See also* Ex. S15 (draft personal injury settlement sheet for Carrales's case).
[22] *See* Ex. S1 at 375.
[23] *See also* Ex. S15.
[24] Ex. S15.
[25] Ex. S1 at 457.
[26] Summ. J. Order at 4. Respondent did not dispute that Denver Spine was owed $9,885.00 from the Carrales settlement.
[27] *See also* Ex. S2 at 177. Respondent stated that although he does not recall receiving the email, he does not dispute that Scott sent it.
[28] Ex. S2 at 177. Scott said that she did not attempt to obtain payment from Carrales, explaining that her practice is to secure payment from the lawyer representing the patient because the insurer sends the settlement funds to the lawyer.
[29] Ex. S2 at 177-78.

that he had paid the invoice because "[his] practice is to pay . . . for all client advances incurred during the litigation process," including payments to healthcare providers.

Respondent emailed Scott on February 18, 2020, requesting a copy of Denver Spine's invoice for Carrales and explaining that he had earlier shredded the case file.[30] Scott recalled that Respondent also asked if Denver Spine had applied the payment to a different patient account.[31] She responded the next day, reiterating that the amount due was $9,885.00 and informing him that Denver Spine had not misapplied any payments to other accounts.[32]

Scott testified that Respondent agreed to pay the $9,885.00 lien amount to Denver Spine and entered into a payment plan in February 2020.[33] Under the payment plan, he was to make nine payments of $1,000.00 plus a final payment of $885.00, with a payment due on the first of each month, beginning on March 1, 2020.[34] Respondent did not comply with the payment plan from the start, Scott said, requiring her to regularly follow up with him from March through October 2020 about the payments.[35] She stated that he fully repaid the lien in July 2021 with a lump sum payment of approximately $5,000.00.

The Carrales Loans

In April 2018, Respondent began loaning money to Carrales, providing him loans totaling $7,850.00 through July 2019, including seven checks totaling $7,000.00 that were written between April 2018 and November 29, 2018.[36] The loans were not for court costs or litigation expenses.[37] Respondent testified that Carrales had asked him for the loans and that he understood Carrales "needed money."[38] He did not provide Carrales any written terms for the loans.[39] Though he maintained he did not expect Carrales to repay the loans, the personal injury settlement sheet he drafted for Carrales's case included a $7,000.00 line-item

[30] Summ. J. Order at 4; Ex. S2 at 180. Respondent testified that he had hired a legal secretary to scan and then shred all of his files because he was approaching retirement. He claimed that the secretary had destroyed Carrales's file in 2019 without first creating a scanned copy as he had instructed her to do. For this reason, he said, he was unable to produce a copy of Carrales's file. *See* Ex. S5 at 508.
[31] *See also* Ex. S2 at 180.
[32] Ex. S2 at 180.
[33] *See also* Ex. S2 at 182-83. Respondent testified that he repaid Denver Spine from his personal funds.
[34] Ex. S2 at 183.
[35] Respondent untimely made the first payment on March 5, 2020; his April 2020 payment was not timely and, once made, did not clear the bank; he only paid $500.00 in May 2020; he failed to submit a payment in June and July 2020; and he paid only $500.00 in August 2020. Ex. S2 at 184-92. At the hearing, Respondent said he failed to comply because he lost income in 2020 due to the COVID-19 pandemic and because he prioritized payments to his staff over the repayment of the Denver Spine lien. "I did the best I could to pay Ms. Scott," he said. *See also* Ex. S2 at 185-86 (Respondent's emails to Scott, attributing his noncompliance to interruptions caused by the pandemic and, in one case, to a client's check that did not clear the bank).
[36] Summ. J. Order at 4; Ex. R5.
[37] Summ. J. Order at 4; Ex. S17.
[38] *See also* Ex. S17.
[39] Summ. J. Order at 4.

entry showing that Carrales repaid him for the loans through the settlement proceeds.[40] Respondent testified that he tracked the loans with scratch paper he kept in his desk. When this disciplinary proceeding began, he directed his accountant to review his bank records and identify the transactions related to the loans, he said.[41]

Trust Account Activity from 2018 to 2020

Donna Scherer, the People's investigator, testified that she contacted Respondent in February 2020 about an overdraft notification on his trust account that the People received from FirstBank.[42] She reviewed records spanning from late 2018 through early 2020 related to Respondent's trust account activity. Scherer said that she obtained copies of checks, statements, and deposits for the trust account from FirstBank.

Transfers from Non-Trust Accounts into Trust Account

FirstBank's records, Scherer said, show that Respondent commingled personal and earned funds with trust funds. In November 2019, the opening balance of his trust account was $27.96.[43] Scherer testified that Respondent deposited a settlement check for $77,000.00 on November 21, 2019[44]—the only deposit in his trust account that month.[45] At the start of December 2019, $22,907.96 remained in trust, consisting almost entirely of funds from the settlement check.[46] Records show no further account activity until December 16, 2019, at which time, Scherer explained, Respondent began transferring money from his checking account 9660 ("Account 9660")[47] into his trust account: $1,500.00 on December 16, 2019; $1,000.00 on December 24, 2019; and $3,000.00 on December 26, 2019.[48] Respondent has admitted that the funds were not trust funds.[49]

Scherer also testified that she inquired about a $2,000.00 deposit into Respondent's trust account made on January 17, 2020, and a $2,200.00 transfer into the account made on January 22, 2020.[50] Respondent stated that the $2,000.00 deposit consisted of personal funds.[51] He further stated that the $2,200.00 transfer came from his personal savings

[40] Summ. J. Order at 4; Ex. S15.
[41] *See also* Ex. R5.
[42] Ex. S4 at 4-5. Scherer explained that the People receive bank overdraft notifications when trust accounts are overdrawn.
[43] Ex. S1 at 476.
[44] The settlement check was not related to Carrales's matter.
[45] *See also* Ex. S1 at 476 (trust account activity for November 2019).
[46] Ex. S1 at 478.
[47] Scherer testified that Account 9660 is Respondent's operating account.
[48] Ex. S4 at 16.
[49] Ex. S4 at 26.
[50] Ex. S4 at 17.
[51] Ex. S4 at 27; *see also* Ex. S1 at 428 (copy of $2,000.00 check deposited to Respondent's trust account on January 17, 2020).

account ending in 7565 ("Account 7565").[52] He had earmarked the $2,200.00 for operating expenses, he said, as at that time he was "[using his] COLTAF account as [his] operating account." Respondent admitted that his trust account contained client funds at the time he used it for operating and personal expenses, stating that he "kept a separate ledger not to invade [his] clients' trust money."

Respondent testified that he placed his personal funds in trust because he believed that Account 9660 was not secure. He explained that in 2019 he provided the bank name, account number, and routing number for Account 9660 to an opposing party in litigation so that the party could transfer funds to the account.[53] Despite his concern about his account security, however, he transferred funds from trust to Account 9660 during that period.[54] He testified that he did not open a new operating account at that time because he anticipated retiring "in a month or two."[55]

Loans Paid from Trust Account

At the hearing, Respondent stated that he loaned Carrales $500.00 on July 12, 2018, via check number 3305 from his trust account.[56] The check, payable to cash, was notated "Daniel Carrles [sic] PI Settlement (Remaining Balance Owing)."[57] Respondent noted that he "just [had] his word" as proof that the payment went to Carrales.

In addition, Scherer testified that she reviewed two transactions involving trust account checks made payable to T.H., whom Respondent identified as a client: check number 3311 for $1,500.00, dated November 25, 2019; and check number 3321 for $1,500.00, dated December 17, 2019.[58] Respondent explained to the People that the checks were "payable to [T.H. and] do not represent settlement funds. . . . The law firm loaned her money . . . . The money loaned to [T.H.] does NOT represent Trust funds but money retained in the trust account from fees that the law firm earned from previous legal work."[59]

Cashed Checks from Trust Account

At the hearing, Respondent claimed that he used check number 3319, payable to FirstBank for $8,554.91 and dated November 30, 2018, to fund a cashier's check that he

[52] Ex. S4 at 27; *see also* Ex. S4 at 13 (trust account activity for January 2020).
[53] *See also* Ex. S4 at 26.
[54] *See* Ex. S1 at 428 (showing transfers from Respondent's trust account to Account 9660 thrice in December 2019); *see also* Ex. S1 at 480 (showing three transfers from Respondent's trust account to Account 9660 in January 2020).
[55] Respondent reported that he eventually opened another operating account in January 2021.
[56] *See also* Ex. S1 at 373 (copy of check number 3305); Ex. S1 at 449 (trust account activity for July 2018).
[57] Ex. S1 at 373.
[58] Ex. S4 at 16; *see also* Ex. S1 at 384 (copy of check number 3311); Ex. S4 at 9, 11 (trust account activity for November and December 2019).
[59] Ex. S4 at 28.

wrote to Carrales.[60] Though the check shows no indication of its purpose, Respondent stated that "he just know[s]" that the payment went to Carrales because he "recall[ed] distinctly that [Carrales] wanted part of his settlement in check and part in cash." Respondent acknowledged that he had no proof "other than his testimony" that Carrales asked for the payment in cash, however.

The next month, on December 26, 2018, Respondent wrote a trust account check to "cash" for $15,685.21.[61] He produced no evidence of the check's purpose, admitting that he has "no proof [of] what the cash was directed towards." Unlike check number 3319, Respondent said that he "honestly [did] not know" the purpose of the check. Respondent was also unable to account for other transactions from his trust account, including a $5,000.00 payment to T.H., dated March 12, 2018; a second $5,000.00 payment to T.H., dated April 9, 2018;[62] and a payment of $8.00 to FirstBank.[63]

Respondent's Recordkeeping

Respondent noted that his recordkeeping system for personal injury cases consists of creating a "personal injury advance file" for each case. The file contains receipts for payments, a ledger, and "all that is used to prepare the personal injury settlement sheet." Everything he needs for a case is contained in the file, he explained. "In the Carrales case," he said, "for some reason when I opened that file, I did not see the lien from Denver Spine." Respondent acknowledged that he has not changed his system since mishandling Denver Spine's funds. "I haven't changed anything," he said, "It's the same accounting practices I've used for fifty years. I never didn't make a payment so there is nothing to be changed."

III. RULE VIOLATIONS

Rule Violations Established on Summary Judgment

Colo. RPC 1.8(a) & Colo. RPC 1.8(e) (Claim I)

As relevant here, Colo. RPC 1.8(a) prohibits a lawyer from entering into a business transaction with a client or knowingly acquiring a possessory or other pecuniary interest adverse to the client unless, among other things, the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client; the terms are fully disclosed in writing in a manner that the client can reasonably understand; and the client gives informed consent to the essential terms of the transaction in a signed writing.

[60] *See* Ex. S1 at 375 (copy of check); *see also* Ex. S1 at 455 (trust account activity for November 2018).
[61] *See* Ex. S1 at 376 (copy of check); *see also* Ex. S1 at 457 (trust account activity for December 2018).
[62] *See* Ex. S1 at 363, 365. Respondent could not recall if the checks were loans to T.H. or used to pay fees associated with her case. He acknowledged the checks bore no indication as to their purposes.
[63] *See* Ex. S1 at 364.

The PDJ concluded on summary judgment that the undisputed facts showed Respondent violated Colo. RPC 1.8(a) when he loaned Carrales $7,000.00 during the 2018 personal injury matter. In support of that finding, the PDJ noted that Respondent had not provided Carrales with written terms for the loans; that Carrales never provided informed consent to the essential terms of the transactions in a signed writing; and that Respondent sought to recoup $7,000.00 from Carrales's portion of the settlement funds as repayment of the loans.

The PDJ also concluded on summary judgment that Respondent violated Colo. RPC 1.8(e), which prohibits a lawyer from providing financial assistance to a client in a pending or contemplated litigation unless the lawyer is advancing court costs and expenses of litigation or is paying court costs and expenses of litigation for an indigent client. The parties did not dispute that the loans, which had been repaid from the settlement proceeds from his case, were not used for court costs or litigation expenses. Because the loans were impermissible under Colo. RPC 1.8(e), the PDJ granted summary judgment on the People's claim.

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

The PDJ entered summary judgment on the portion of the People's second claim premised on Colo. RPC 1.15A(c), which requires a lawyer to keep separate any property in which two or more persons claim an interest until there is a resolution of the claims.

The parties did not dispute that Respondent deposited the $40,000.00 settlement check from Carrales's case in his trust account; that Respondent should have held $9,885.00 in trust to pay the lien Denver Spine held on the funds; and that Respondent depleted his trust account to $14.90 without paying Denver Spine's lien. Further, Respondent admitted that he should have been holding $9,885.00 in trust for Denver Spine and stated that he had mistakenly overlooked paying the lien. The PDJ thus entered summary judgment on Claim II as to Colo. RPC 1.15A(c).

Colo. RPC 1.15D (Claim III)

Colo. RPC 1.15D requires a lawyer to maintain in a current status for seven years an appropriate recordkeeping system tracking all deposits and withdrawals from the lawyer's trust account, with details of the transactions and the related parties;[64] copies of all written communications setting forth the basis or rate for the lawyer's fees;[65] and copies of all statements to clients and third persons showing the disbursements of funds to them or on their behalf.[66]

[64] Colo. RPC 1.15D(a)(1)(A).
[65] Colo. RPC 1.15D(a)(3).
[66] Colo. RPC 1.15D(a)(4).

The People moved for summary judgment on this claim, alleging that Respondent failed to keep appropriate records of Carrales's settlement funds and the payments of those funds from his trust account. They also argued that he did not keep copies of the written communications concerning the basis or rate for his fees and that he had destroyed the records that he should have maintained under Colo. RPC 1.15D. Respondent disputed the People's allegations but acknowledged in his response to their summary judgment motion that he did not keep the required records for seven years. He argued, however, that he had destroyed them in accordance with Colo. RPC 1.16A(a)(2).[67]

The PDJ deemed that argument unavailing, concluding that Colo. RPC 1.15A and Colo. RPC 1.15D exclusively govern a lawyer's duty to maintain financial and accounting records. More important, the PDJ found, Respondent failed to produce any financial records from the case, save for a draft settlement sheet. Because Respondent could not muster any evidence to demonstrate that he kept appropriate records documenting his fees or the disbursement of the settlement funds, the PDJ entered summary judgment as to Colo. RPC 1.15D.

Rule Violations Established at Hearing

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

Colo. RPC 1.15A(a) requires a lawyer to hold property of clients and third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Violations of this rule, which arise from a lawyer's failure to safeguard client property, are considered "technical" conversions.[68] A lawyer who permits earned fees to accumulate in a trust account containing client funds likewise violates this rule by commingling earned funds and client funds.[69]

In their complaint, the People allege that Respondent contravened Colo. RPC 1.15A(a) in two ways: (1) by failing to safeguard the $9,885.00 owed to Denver Spine; and (2) by commingling personal funds, unearned client funds, settlement funds, and earned funds in his trust account.

We find that the facts giving rise to Respondent's violation of Colo. RPC 1.15A(c) also establish that he violated Colo. RPC 1.15A(a)—namely by failing to safeguard Denver Spine's funds, commingling them with his own money.[70] The People need not prove that Respondent transferred the funds from his trust account into his operating account or that

[67] "A lawyer in private practice shall retain a client's files respecting a matter unless . . . the lawyer has given written notice to the client of the lawyer's intention to destroy the file on or after a date stated in the notice . . ."

[68] *People v. Varallo*, 913 P.2d 1, 11 (Colo. 1996).

[69] *People v. Shidler*, 901 P.2d 477, 478-79 (Colo. 1995).

[70] The People did not ask the PDJ to enter summary judgment finding a violation of Colo. RPC 1.15A(a) as to Denver Spine's funds.

he spent the funds for his own personal use.[71] It is enough that Respondent deposited the $40,000.00 settlement check for Carrales's matter in his trust account; that he should have held $9,885.00 in trust to pay the lien Denver Spine held on the settlement funds; and that he depleted his trust account to $14.90 without paying Denver Spine's lien. Because the People established these facts by clear and convincing evidence, we find that Respondent violated Colo. RPC 1.15A(a).

We also find clear and convincing evidence that Respondent placed nonclient funds into his trust account, commingling the money with trust funds in violation of Colo. RPC 1.15A(a). His trust account held settlement funds at the time he added his personal funds from Account 9660 on December 16, 2019. He then made two additional transfers from Account 9660 to his trust account in December 2019. He also deposited into his trust account a check containing personal funds on January 17, 2020, and he transferred personal funds from Account 7565 on January 22, 2020. Respondent's emails to Scherer also show that he retained earned funds in his trust account, from which he paid loans to his client, T.H. Indeed, at the hearing Respondent did not dispute that he failed to segregate personal and earned funds from client funds.[72] We thus find that he commingled trust monies with personal and earned funds in his trust account by "us[ing] [his] COLTAF account as [his] operating account," thereby violating Colo. RPC 1.15A(a).

Colo. RPC 8.4(c) – Knowing Conversion (Claim IV)

Colo. RPC 8.4(c) states that a lawyer commits professional misconduct by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Dishonest conduct prohibited by Colo. RPC 8.4(c) includes knowing conversion. Knowing conversion occurs when a lawyer takes money that has been entrusted to the lawyer by a client or third party, knowing that the money belongs to the client or third party, and knowing that the client or third party has not authorized the taking.[73] Here, because the People plead in their complaint that Respondent knowingly converted Denver Spine's funds, they must show that he acted with actual knowledge to establish this claim.[74]

The People claim that Respondent knowingly converted $9,885.00 owed to Denver Spine from the Carrales settlement. They point out that Respondent's communications with Scott in 2018 and the draft settlement sheet for Carrales's case demonstrate that even

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[71] *Cf. Varallo*, 913 P.2d at 11 (holding that a lawyer's personal gain or benefit from unauthorized temporary use of client funds is not an element of conversion).

[72] Respondent's counsel acknowledged there was "no question" that Respondent commingled funds in violation of Colo. RPC 1.15A(a) and Colo. RPC 1.15A(c).

[73] *In re Kleinsmith*, 2017 CO 101, ¶ 14.

[74] *See In re Egbune*, 971 P.2d 1065, 1069 (Colo. 1999) (stating that claims involving a lawyer's knowing misappropriation of property are excepted from the general rule that a reckless state of mind is equivalent to "knowing" for disciplinary purposes) (quoting *People v. Small*, 962 P.2d 258, 260 (Colo. 1998)); *see also* Colo. RPC 1.0(f) ("Knowing[ ] . . . denotes actual knowledge of the fact in question [and] . . . may be inferred from circumstances.").

though he knew Denver Spine held a lien on the funds, he did not honor the lien after he received the settlement check. Instead, they assert, he depleted his trust account within a month after depositing the check, removing the funds that he should have held in trust for Denver Spine. He then ignored Scott's request for a status update in February 2019 and did not return her calls that followed, they say. The People claim that Respondent evaded Scott's inquiries until February 2020, when she notified him that she would contact disciplinary authorities if he did not satisfy the bill.

Respondent acknowledges that he did not pay the lien as he should have, but he contends that his failure to pay it was negligent rather than knowing. He testified that he "simply overlooked" the payment and had "no excuse" for missing it. He speculated that the error may have stemmed from his expectation that Carrales would pay Denver Spine from his own portion of the settlement funds or from his confusion with a large check he had sent to Denver Spine relating to a separate case.

We find that the evidence Respondent knowingly converted Denver Spine's money ultimately falls just short of clear and convincing. The evidence shows that Respondent knew Denver Spine held a lien on the settlement funds and that he withdrew all but $14.90 from his trust account the month after he received the settlement check. But other evidence casts doubt on whether he knew his trust account contained Denver Spine's money when he depleted the funds held in the account.[75]

First, he did not use the $9,885.00 figure from Denver Spine's August 2018 invoice in his demand letter to Farmers. Instead, he cited a $5,455.00 figure, which was invoiced at the time he received the first ledger from Scott on March 22, 2018. Similarly, the draft settlement sheet reflected a total lien amount of $6,603.00 for Carrales's medical providers—including Denver Spine—which is substantially less than the $9,885.00 claimed by Denver Spine alone. To us, this indicates that Respondent had mismanaged the records from Denver Spine, possibly contributing to an error in logging Denver Spine's lien. That he did not see the lien in Carrales's file supports this inference.

Second, though Respondent ultimately acknowledged that he was responsible for paying the lien, he steadfastly maintained that he believed, at the time, that Carrales would pay Denver Spine. His contention tracks with his testimony that he paid Carrales a cashier's check from his trust account in addition to the two checks covering Carrales's portion of the settlement. This third check casts doubt on the People's theory of the case, since it suggests that Respondent may have expected that Carrales would use those funds to pay Denver Spine, as Carrales had agreed to do.[76]

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[75] *Cf. Varallo*, 913 P.2d at 11 ("[U]sing client funds for personal use without the client's permission by writing a check on a trust account that the lawyer *knows* contains only client funds would be a knowing conversion of client funds . . . .") (emphasis added).

[76] We are less convinced by Respondent's theory that he may have confused the Denver Spine payment for Carrales's matter with a payment from another case. The check for $19,059.00 issued in the other matter was dated February 9, 2018, more than one month before Respondent received Denver Spine's first invoice, and

And third, we note that Respondent had always paid Denver Spine in the past, as he and Scott testified, and that he distributed funds to other medical providers in Carrales's case, suggesting that he did not intend to take Denver Spine's money.

Despite these findings, we are troubled by Scott's testimony that she left voice messages for Respondent requesting updates on Carrales's case. But Respondent emphatically denied receiving them, leaving Scott's unanswered email from February 2019 as the only corroborated evidence that he failed to respond to her requests for a status update. This email, standing alone, does not clearly convince us that Respondent possessed the requisite mental state to be held accountable for a violation of Colo. RPC 8.4(c).

The People also try another tack: they maintain that Respondent's mishandling of Denver Spine's money was a result of the willfully blind eye he turned toward his noncompliant recordkeeping. They note that he was previously disciplined for mismanaging his trust account and thus knew that his recordkeeping system did not meet the requirements of Colo. RPC 1.15D.[77] They also reason that Respondent should not be allowed to insulate himself against a finding of knowing conversion by failing to keep records. The requirements of Colo. RPC 1.15D would be useless, they caution, if lawyers engaged in knowing conversion could shroud their misconduct with improper recordkeeping. They thus urge us to infer a dishonest motive from the lack of records in this case.

We decline in this instance to infer a dishonest motive from Respondent's failure to produce records, as we credit his testimony that his staff inadvertently shredded Carrales's file without scanning it. Further, Respondent's testimony concerning his noncompliant recordkeeping practices and his inability to account for numerous checks drawn on his trust account left us with the impression that he fundamentally misunderstands his duties to maintain required financial records. In Respondent's unwavering confidence in his recordkeeping methods, we perceive not a calculated design to conceal his trust account activity but instead a stubborn refusal to change his longstanding practices.

Last, we disagree with the People that Respondent's willful blindness—which we understand to mean recklessness[78]—concerning his records can support their claim for knowing conversion. To find a violation of knowing conversion requires clear and convincing evidence that he had actual knowledge of his misconduct when he withdrew Denver Spine's

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more than nine months before he received the Carrales settlement check. *Compare* Ex. S1 at 360 *with* Exs. S3, S14.

[77] In 2018, Respondent was publicly censured for negligently violating Colo. RPC 1.5(c) and Colo. RPC 1.15A(c) when he failed to withhold a portion of a settlement payment in which his former co-counsel had claimed an interest and when he failed to comply with rules governing contingency fee agreements. The discipline did not implicate his duty to maintain records under Colo. RPC 1.15D.

[78] *See In re Fisher*, 202 P.3d 1186, 1203 (Colo. 2009) (stating that a lawyer demonstrates a reckless mental state when the lawyer "deliberately close[s] his eyes to facts he had a duty to see . . . .") (quoting *People v. Rader*, 822 P.2d 950, 953 (Colo. 1992)).

share of the Carrales settlement funds from his trust account.[79] In this case, the evidence that Respondent was aware that his trust account contained Denver Spine's funds when he depleted it was shy of clear and convincing. In sum, we determine that the People did not satisfy their burden to show that Respondent knowingly converted Denver Spine's money as they allege in the complaint. We thus find they have not proved Claim IV.

IV. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[80] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[81] When imposing a sanction after a finding of lawyer misconduct, the Hearing Board must 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 the Hearing Board may then adjust based on aggravating and mitigating factors.

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

Duty: Respondent violated his duty of client loyalty in two respects. By loaning money to Carrales, Respondent acquired an interest adverse to Carrales without notifying him of the potential conflicts of interest that could arise from those transactions. Respondent also flouted his duty to other clients by failing to segregate their property from his own.

Because Respondent did not safeguard the funds claimed by Denver Spine, he breached his duty to Denver Spine and, by extension, to the public.[82] We also find that his failure to maintain trust account records and other records from Carrales's case violated the duty he owed as a professional to track his handling of client and third-party funds.

Mental State: By deviating from the recordkeeping requirements set forth in Colo. RPC 1.15D, we find that Respondent recklessly failed to comply with his duty to maintain records. But because a reckless finding satisfies a knowing mental state under the ABA *Standards*, we determine that he acted with a knowing state of mind when violating this rule.[83] We find that he acted negligently, however, in failing to preserve the CFA and other

[79] *See Egbune*, 971 P.2d at 1069.
[80] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).
[81] *See In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).
[82] *See* ABA *Annotated Standards* Preface at xviii ("Members of the public are entitled to be able to trust lawyers to protect their property . . . .").
[83] *See* Colo. RPC 1.0 cmt. 7A ("[f]or purposes of applying the ABA *Standards for Imposing Lawyer Sanctions* . . . the Court will continue to apply the *Egbune* line of cases" [i.e., considering a reckless state of mind, constituting scienter, as equivalent to "knowing"]); *see also In re Egbune*, 971 P.2d at 1069. For the purpose of assessing the appropriate sanction for lawyer conduct, "knowing" is the conscious awareness of the nature or attendant circumstances of the conduct, without the conscious objective or purpose to accomplish a particular result. ABA *Annotated Standards* Preface at xxi.

records contained in Carrales's file, as we credit his testimony that his staff mistakenly destroyed the file without first creating electronic copies of its contents.

We find that Respondent acted knowingly when he commingled personal and earned funds with client funds in his trust account, violating Colo. RPC 1.15A(a). He admitted to knowingly commingling funds in 2019 and 2020 and testified to using his trust account as an operating account. He acknowledged that his trust account held client funds during that time, stating that he kept a ledger so as not to "invade" the client funds kept in the account.

We agree with the People that Respondent's failure to implement a compliant, or even a reasonable, system to manage his trust account made his mishandling of client funds all but inevitable. Thus, though we do not find clear and convincing evidence that he knowingly converted Denver Spine's money, we readily find that he should have known he failed to safeguard Denver Spine's funds when he depleted his trust account. In other words, we find that Respondent acted with a reckless state of mind when he violated Colo. RPC 1.15A(a) by mishandling the $9,885.00 owed to Denver Spine. For the same reason, we determine that he recklessly violated Colo. RPC 1.15A(c) when he failed to keep separate Denver Spine's funds from his own money.[84]

Finally, we find that Respondent acted knowingly when he provided loans to Carrales in violation of Colo. RPC 1.8(e) and without complying with the advisements required by Colo. RPC 1.8(a). Respondent testified that he knowingly provided money to Carrales, whom he knew to be a client, and that he arranged to recoup the money from Carrales's share of the settlement funds. We thus reject his contention that he did not knowingly violate Colo. RPC 1.8 because he believed that the loans were permissible under the rule.[85]

Injury: We find that Respondent caused actual harm to Denver Spine by mishandling Denver Spine's funds in violation of Colo. RPC 1.15A(a) and Colo. RPC 1.15A(c). Due to this misconduct, Denver Spine did not receive the $9,885.00 that it was rightfully due for over two years. Scott spent extra time and effort to secure payment, resulting in stress and frustration. She added that the incident made her "look like [she] wasn't able to do her job." Further, by commingling his clients' money with his own, Respondent caused his clients potential harm.[86]

We also find that Respondent's mismanagement of his records contributed to his mishandling of Denver Spine's funds, which harmed Denver Spine and Scott as described

[84] Because a reckless finding is sufficient to establish a knowing mental state for sanctions analysis purposes, we proceed in that process by adopting a knowing state of mind for these rule violations. *See supra* note 83.

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

[86] *Shidler*, 901 P.2d at 479 ("Commingling is dangerous to the client . . . because it can subject client funds to the claims of the lawyer's creditors.") (citing *People v. McGrath*, 780 P.2d 492, 493-94 (Colo. 1989)).

above. Likewise, Respondent's misconduct caused actual harm—albeit negligible—to the reputation of lawyers, as Scott testified that he "appear[ed] to be unable to do his [job]." His inadequate recordkeeping also resulted in actual harm to the legal profession. The absence of records in this case hampered the People's investigation into Respondent's trust account activity, interfering with their ability to oversee his management of client funds and to trace Denver Spine's money.

Finally, by failing to advise Carrales that the loans could create a conflict of interest affecting the representation, Respondent caused potential harm to his client.

ABA *Standards* 4.0-8.0 – Presumptive Sanction

Under the ABA *Standards*, the presumptive sanction for Respondent's violation of Colo. RPC 1.15A(a) and Colo. RPC 1.15A(c) is suspension. ABA *Standard* 4.12 provides that suspension is generally appropriate when a lawyer knows or should know that the lawyer is dealing improperly with client funds, resulting in injury or potential injury to a client. The presumptive sanction is also set by ABA *Standard* 7.2, which calls for suspension when a lawyer knowingly engages in conduct that violates a professional duty—here, failing to maintain adequate recordkeeping in violation of Colo. RPC 1.15D—thereby causing injury or potential injury to a client, the public, or the legal system. Likewise, the presumptive sanction for Respondent's violations of Colo. RPC 1.8 is suspension, as set by ABA *Standard* 4.32, because he knew that the loans created a conflict of interest but did not disclose the potential effects of that conflict to Carrales.

We pause briefly to address the People's argument that ABA *Standard* 8.1(b) should apply in this circumstance. That *Standard* generally provides for disbarment when a lawyer who has been suspended for the same or similar misconduct intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.[87] The People insist that because Respondent's mishandling of trust funds in the Carrales case occurred after Respondent was disciplined in April 2018, he must be disbarred. But in that case, case number 18PDJ022, Respondent stipulated to a public censure for negligent violations of Colo. RPC 1.5(c) and Colo. RPC 1.15A(c). We thus find that the appropriate *Standard* would instead be ABA *Standard* 8.2, which calls for suspension when a lawyer who has been reprimanded for the same or similar misconduct engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. This accords with our other findings, as discussed above, that the presumptive sanction in this case is suspension.

[87] The People argue that ABA *Standard* 8.1(a) would also apply in this case. That *Standard* applies when a lawyer "intentionally or knowingly violates the terms of a prior disciplinary order . . . ." Here, the People have not shown that Respondent's conduct in this case violated a previous disciplinary order. We thus decline to apply ABA *Standard* 8.1(a).

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.[88] As explained below, we apply six factors in aggravation, assigning substantial weight to one, and three factors in mitigation, according limited weight to each.

Aggravating Factors

Prior Disciplinary History – 9.22(a): As we have described, in 2018 Respondent stipulated to a public censure for violations of Colo. RPC 1.5(c) and Colo. RPC 1.15A(c). In that case, Respondent agreed that he failed to withhold a portion of a settlement payment that another lawyer had claimed and failed to comply with rules governing contingency fee agreements. The misconduct occurred from 2016 to 2017. The parties stipulated that Respondent did not pay the other lawyer, who had been co-counsel on the case but withdrew from the matter before it settled, in part because he did not believe that she was entitled to the amount of the funds she had claimed. We are troubled that Respondent agreed to the stipulation less than one year before his failure to safeguard Denver Spine's funds and that the discipline involved similar misconduct. But our concerns are tempered by the lack of other substantial discipline in Respondent's half-century career.[89] We therefore accord this factor average weight.

Dishonest or Selfish Motive – 9.22(b): The People ask that we apply this factor, alleging that that Respondent's acts were done for his own financial gain. But we did not find clear and convincing evidence that Respondent took Denver Spine's funds for his own gain. We do find, however, that his lackadaisical recordkeeping and his insistence on its sufficiency evince a self-serving purpose. Respondent's approach suggests a willingness to cut corners in maintaining records, collecting only the documents he relies on for his client files while disregarding the more stringent requirements of Colo. RPC 1.15D. Because our impression is that his conduct stems as much from habit and inertia as from selfish motivation, however, we accord this factor only limited weight.

Pattern of Misconduct – 9.22(c): Respondent commingled funds in his trust account and misused it as an operating account over at least a two-month period.[90] He routinely disregarded the recordkeeping standards set forth in Colo. RPC 1.15D, maintaining no trust records (none that were shown, at least), drafting checks from his trust account without indicating how the funds were used, and logging his transactions with Carrales on scratch paper. This pattern of noncompliant accounting practices resulted in his reckless

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

[89] The stipulation in case number 18PDJ022 reflects that Respondent has a record of private discipline from 1993. The People did not seek to introduce that case, which is filed under seal.

[90] Though Respondent testified that he did not open a new operating account until January 2021, the People did not present evidence that he commingled funds in his trust account save for the several instances in December 2019 and January 2020.

mishandling of trust monies. Last, he engaged in seven instances of misconduct by loaning money to Carrales. We thus find that the application of this factor is warranted and give it substantial weight.

Multiple Offenses – 9.22(d): Respondent's misconduct in this case ranged wide, encompassing several discreet types of rule violations: his misuse of his trust account as an operating account; his mishandling of Denver Spine's funds; his improper loans to Carrales; and his failure to maintain adequate trust account records. We therefore apply this factor and accord it average weight.

Bad Faith Obstruction of the Disciplinary Proceeding by Intentionally Failing to Comply with Rules or Orders of the Disciplinary Agency – 9.22(e): The People urge us to apply this factor, alleging that Respondent intentionally failed to make reasonable efforts to find documents responsive to their discovery requests in this case; delayed five months before obtaining counsel; and waited seven months before attempting to subpoena Carrales for missing documents. We disagree that his actions amount to bad faith obstruction of this proceeding. Respondent cannot produce records that he does not have. We thus believe that applying this factor for his failure to produce trust account records would, in essence, penalize him twice for not complying with Colo. RPC 1.15D. Further, we find that the People did not present clear and convincing evidence that Respondent participated in this case in bad faith, and we will not fault him for determining during the course of the proceeding that he required counsel. For these reasons, we decline to apply this aggravating factor.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): The People argue that we should apply this factor because Respondent continues to insist that he negligently mishandled Denver Spine's funds. We disagree, as we find that he did not knowingly convert the funds. Even so, we are troubled by his admission that he has not changed the accounting practices that led to his failure to safeguard Denver Spine's funds. To us, this indicates that Respondent is disinterested in exercising compliant recordkeeping and accounting practices, diminishing our confidence that he will avoid similar misconduct in the future. We therefore apply this factor and give it average weight.

Substantial Experience in the Practice of Law – 9.22(i): Respondent was licensed in Colorado in 1972 and has practiced law for fifty years. We thus apply this factor, assigning it average weight.

Mitigating Factors[91]

Absence of a Dishonest of Selfish Motive – 9.32(b): Respondent argues for the application of this mitigating factor because, he says, he sought neither to benefit himself when dealing with the Denver Spine funds nor to recoup all of his loans from Carrales. We disagree on both points. While we did not find clear and convincing evidence that

[91] The People argue against applying any mitigating factors in this case.

Respondent acted with a dishonest motive when he mishandled Denver Spine's funds, evidence that he did *not* possess a dishonest motive is similarly lacking. In addition, we did not see evidence that he gave a pass to Carrales on the loans. To the contrary, he sought to recoup at least $7,000.00 from Carrales. We therefore decline to apply this mitigating factor.

Personal or Emotional Problems – 9.32(c): Respondent testified that beginning in September 2018 and stretching through November of that year, he experienced significant family hardship and tragedy. He lost one family member to illness and another to murder, he said, and he provided hospice care to his sister, who had moved in with him and his wife during that period. "Things were kind of tough for me," he explained. He added that these troubles were "no excuse." We apply only limited mitigating weight to this factor, as Respondent offered no evidence other than his testimony.

Timely Good Faith Effort to Make Restitution – 9.32(d): We credit Respondent for repaying Denver Spine.[92] We consider, however, the evidence that he failed to adhere to the payment plan that he made with Scott, and we take particular note of Scott's testimony that he waited until June 2021—after the People filed their complaint—before submitting a final lump sum payment of approximately $5,000.00. We therefore accord this factor limited mitigating weight.

Cooperation with Disciplinary Proceedings – 9.32(e): Respondent asks us to apply this mitigating factor because he responded to the People's discovery requests as best as he could, readily providing them with the few documents from Carrales's case that remained after his staff shredded the case file. We agree, but only on the margin, given that his failure to maintain other essential records has thwarted the People's oversight function. We therefore apply this factor but accord it limited weight.

Character and Reputation – 9.32(g): Respondent testified that he enjoys a stellar professional reputation, stating that the doctors with whom he works respect him and that insurance companies deal with him on a "handshake basis." We decline to apply this factor, however, because he offered no other testimony or evidence to support his claims of excellent character and reputation.

Delay in Disciplinary Proceedings – 9.32(j): Respondent contends that the gap in time between his misconduct in November 2018 and the People's submission of their complaint in May 2021 amounts to a delay in the disciplinary proceedings. We disagree. Emails between Respondent and Scott show that he asked Scott for time to repay Denver Spine before she contacted disciplinary authorities and that Scott assented until at least October 2020.[93] In

[92] *See In re Fischer*, 89 P.3d 817, 821 (Colo. 2004) (deeming that a lawyer's voluntary payment of restitution is a mitigating factor under the ABA *Standards*). The People argue that we should not apply this factor, stating that his repayment is neither aggravating nor mitigating under ABA *Standard* 9.4(a). That *Standard*, however, applies to forced or compelled restitution. Here, Respondent voluntarily repaid Denver Spine.

[93] Ex. S2 at 191-92.

addition, the People's allegations include misconduct that occurred in 2020. We therefore do not find that this proceeding was delayed and decline to apply this factor.

Remorse – 9.32(l): Respondent asks us to find that his remorse for his misconduct should mitigate his sanction. We will not make this finding. Respondent's only unqualified expression of remorse was his testimony that he made a "big mistake" by failing to pay Denver Spine from the Carrales settlement funds. As for the loans to Carrales, Respondent said he regretted that his "interpretation of [Colo. RPC 1.8] was incorrect" but otherwise showed no remorse for his conduct, though we acknowledge his testimony that he believed that he was helping Carrales with the loans. These limited declarations, moreover, are offset by his unrepentant posture over his recordkeeping and accounting practices. We thus decline to apply this factor in mitigation.

Remoteness of Prior Offenses – 9.32(m): At the hearing, Respondent argued for the application of this factor, claiming that the misconduct for which he was publicly censured occurred seven years before the People filed the complaint in this case. But his misconduct in case number 18PDJ022 occurred from 2016 to 2017, only four years before the People filed their complaint and a year before his misconduct began in this case. Courts have considered prior discipline occurring nearly ten or more years in the past to be remote, warranting application of this factor.[94] In contrast, courts have deemphasized or declined to apply this factor when the misconduct occurred five or fewer years earlier.[95] Here, because we are faced with the latter circumstance, we decline to apply this mitigating factor.

Analysis Under ABA *Standards* and Case Law

The Hearing Board heeds the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[96] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases.'"[97] Though prior cases can inform through analogy, the Hearing Board is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.[98] We take into account that in cases involving multiple types of lawyer misconduct, the ABA *Standards* recommend that

[94] *See; e.g., Fischer*, 89 P.3d at 822 (finding that a letter of admonition issued ten years before the disciplinary proceeding warranted application of ABA *Standard* 9.32(m)); *In re Odo*, 375 P.3d 320, 321, 329 (Kan. 2016) (finding that a lawyer's prior discipline in 2006 was remote in time from disciplinary charges filed in 2015).
[95] *See, e.g., In re Beauregard*, 189 A.3d 1236, 1253 (Del. 2018) (placing less emphasis on this factor when only four years elapsed between the lawyer's completion of his disciplinary probation and the misconduct leading to the proceeding); *The Fla. Bar v. Dopazo*, 232 So.3d 258, 262 (Fla. 2017) (finding that a lawyer's prior misconduct was not remote in time where only five years separated it from the conduct at issue).
[96] *See In re Attorney F.*, 2012 CO 57, ¶ 20; *see also Fischer*, 89 P.3d at 822 (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).
[97] *Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[98] *Id.* ¶ 15.

the ultimate sanction should be at least consistent with, and generally greater than, the sanction for the most serious disciplinary violation.[99]

As discussed above, the presumptive sanction under the ABA *Standards* in this case is suspension. Case law also calls for suspension in matters where, like here, a lawyer fails to safeguard funds without a knowing mental state.[100] The length of the suspension depends on the presence of aggravating and mitigating factors.[101]

In Colorado, lawyers have been disciplined with suspensions of one year and one day for misconduct similar to Respondent's. In *People v. Zimmermann*, the Colorado Supreme Court accepted a hearing board's recommendation to suspend a lawyer for one year and one day after the lawyer recklessly mismanaged trust account funds over a three-year period, failed to deposit an unearned advance fee into his trust account, transferred trust monies into a personal tax account, commingled operating funds in his trust account, improperly used his clients' funds to pay his personal and business expenses, and refunded unearned attorney's fees to clients from funds advanced by other clients.[102] In determining the appropriate sanction, the hearing board weighed four aggravating factors against two factors in mitigation.[103]

The Colorado Supreme Court suspended a lawyer for one year and one day in *People v. Galindo* based on the lawyer's negligent misappropriation of $20,000.00 of his client's money.[104] The lawyer had applied the funds to an investment without the client's authority, and then spent the lawyer's own money to fund other matters that the client had intended the $20,000.00 to be used for.[105] In rejecting the hearing board's recommendation for a three-year suspension, the *Galindo* court noted the presence of seven mitigating factors and only two aggravators.[106]

In a case presenting a rough balance between mitigating and aggravating factors, the Colorado Supreme Court accepted a hearing board's recommendation in *People v. Wechsler* and suspended a lawyer for one year and one day after the lawyer withdrew funds from his

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[99] ABA *Annotated Standards* Preface at xx.
[100] *See People v. Zimmermann*, 922 P.2d 325, 329 (Colo. 1996) ("The single most important factor in determining the appropriate level of discipline . . . is whether [the lawyer's] misappropriation of client funds was knowing, in which case disbarment is the presumed sanction, or whether it was reckless, or merely negligent, suggesting that a period of suspension is adequate."); *People v. Wechsler*, 854 P.2d 217, 222-23 (Colo. 1993) (finding that suspension is appropriate when conversion is neither intentional nor willful); *People v. McGrath*, 780 P.2d 492, 493 (Colo. 1989) (noting that suspension, at the least, is appropriate when a lawyer should know that the lawyer is dealing improperly with client property).
[101] *People v. Galindo*, 884 P.2d 1109, 112 (Colo. 1994) (citing *Wechsler*, 854 P.2d at 222).
[102] 922 P.2d at 326-29.
[103] *Id.* at 330.
[104] 884 P.2d at 1111-112.
[105] *Id.* at 1111.
[106] *Id.* at 1112.

trust account for cash and money orders.[107] The lawyer also misrepresented to his client the location of the client's funds; failed to provide the client with an accounting of the funds for almost two years; and failed to promptly deliver the funds on the client's request.[108] The hearing board did not find, however, that the lawyer had knowingly misappropriated the funds.[109] In making its recommendation, the hearing board considered two factors in aggravation and three in mitigation.[110]

Misconduct similar to Respondent's can support a suspension longer than one year and one day as well. For instance, in *People v. Schaefer*, the Colorado Supreme Court approved a hearing panel's recommendation and imposed a two-year suspension after a lawyer—who did not maintain a trust account—negligently mishandled his client's funds by placing the funds in his operating account, using the funds for purposes that the client had not authorized, and failing to return the funds for more than a year despite the client's demands that he do so.[111] In accepting the hearing panel's recommendation, the Colorado Supreme Court considered five aggravators—including the lawyer's refusal to open a trust account until well after the disciplinary case began and an indifference to making restitution to his client—and no mitigating factors.[112] The *Schaefer* court also expressed concern over the lawyer's dismissive attitude toward his fiduciary duties.[113]

Here, Respondent's mishandling of Denver Spine's funds was reckless rather than knowing, bringing this matter in line with the above cases.[114] But the greater imbalance toward aggravators in this case distinguishes it from *Zimmermann*, *Galindo*, and *Wechsler*. Unlike the lawyer in *Zimmermann*, Respondent has been disciplined in the past for similar misconduct and has refused to acknowledge the full extent of his misconduct. Likewise, that Respondent has a history of discipline, has exhibited a significant pattern of misconduct, and has not acknowledged his misconduct differentiates this case from *Galindo*. Similarly, the aggravators of prior discipline and a pattern of misconduct that we consider here were not present in the *Wechsler* case. And though we are troubled by Respondent's disinterest in conforming his records and account practices to professional rules, we do not perceive in him the same arrogant attitude regarding his ethical responsibilities that the *Schaefer* court decried. This is because we credit his voluntary repayment of Denver Spine's lien and acknowledge his concern over his client's financial difficulties.

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[107] 854 P.2d at 221-22.
[108] *Id.* at 222-23.
[109] 854 P.2d at 220.
[110] *Id.* at 222.
[111] 938 P.2d 147, 148-49 (Colo. 1997).
[112] *Id.* at 150.
[113] *Id.* (noting that the lawyer implied that "he is so well off that he is above the fiduciary responsibilities of other lawyers").
[114] For this reason, we decline the People's request that we look to our previous case, *People v. Waters*, for guidance. 438 P.3d 753 (Colo. O.P.D.J. 2019). Unlike the present matter, the lawyer in *Waters* admitted that his failure to maintain client funds in his trust account was willful. *Id.* at 761.

Based on the predominance of the aggravating factors and the minimal weight we accord to the few mitigating factors, we find that Respondent's misconduct warrants a significant served suspension exceeding the discipline ordered in *Zimmermann*, *Galindo*, and *Wechsler*. But the suspension should also be of a duration less than that imposed in *Schaefer*. We thus determine that an eighteen-month suspension is appropriate in this case. Indeed, the nature and extent of Respondent's rule violations, and his seeming indifference toward his recordkeeping responsibilities, convince us that protection of the public demands a sanction that carries with it the requirement that he petition for reinstatement under C.R.C.P. 242.39. To further protect the public, we also conclude that Respondent must include in any petition for reinstatement proof of his successful completion of the People's trust account school and ethics school.

V. CONCLUSION

Respondent disregarded his duty to his client by failing to advise Carrales that the loans he extended could have created a conflict of interest affecting the representation. He also disregarded his duty to safeguard property in his care belonging to clients and third parties when he commingled those funds with his own and when he mishandled $9,885.00 belonging to Denver Spine. Finally, Respondent ignored his duty to track the money that clients and third parties had entrusted to him, making it impossible for Colorado disciplinary authorities to trace his trust account transactions and obscuring his own recollection. This pattern of misconduct, coupled with his prior discipline for failing to protect funds in which another party claimed an interest and his failure to recognize the wrongful nature of his misconduct, warrants a meaningful period of suspension. It also requires that he prove he has been rehabilitated, that he is fit to practice law ethically, and that he is able to properly maintain his trust account. The appropriate sanction here is a suspension of eighteen months**.**

VI. ORDER

The Hearing Board therefore **ORDERS:**

1. **DANIEL LEE ENGLISH**, attorney registration number **01731**, is **SUSPENDED** from the practice of law for a period of **EIGHTEEN MONTHS**. The suspension will take effect upon issuance of an "Order and Notice of Suspension."[115]

2. As part of any petition for reinstatement under C.R.C.P. 242.39 from the suspension imposed in this case, Respondent **MUST** demonstrate his successful completion of (1) the trust account school offered by the People, and (2) the ethics school offered by the People.

[115] 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). In some instances, the order and notice may issue later than the thirty-five days by operation of C.R.C.P. 251.27(h), C.R.C.P. 59, or other applicable rules.

3. 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.

4. Within fourteen days of issuance of the "Order and Notice of Suspension," Respondent **SHALL** comply with C.R.C.P. 251.28(d), requiring a lawyer to file an affidavit with the PDJ setting forth pending matters and attesting, *inter alia*, to notification of clients and other state and federal jurisdictions where the attorney is licensed.

5. The parties **MUST** file any posthearing motions **no later than Monday, April 18, 2022**. Any response thereto **MUST** be filed within seven days.

6. The parties **MUST** file any application for stay pending appeal **no later than Monday, April 25, 2022**. Any response thereto **MUST** be filed within seven days.

7. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** submit a statement of costs **no later than Monday, April 18, 2022**. Any response challenging those costs **MUST** be filed within seven days.

DATED THIS 4th DAY OF APRIL, 2022.

William R Lucero

PRESIDING DISCIPLINARY JUDGE

/s/ Christine M. Hernandez

CHRISTINE M. HERNANDEZ
HEARING BOARD MEMBER

/s/ Khánh Q. Vũ

KHÁNH Q. VŨ
HEARING BOARD MEMBER