

People v. Abelman, No. 01PDJ003. 9.18.01. Attorney Regulation. The Presiding Disciplinary Judge and Hearing Board disbarred Allan David Abelman from the practice of law in this default proceeding. In one matter, Abelman represented the clients in a personal injury matter, deposited the settlement proceeds into his law office trust account, paid a portion of the proceeds to the clients, and retained a specific amount to pay medical providers and two other accounts. Rather than paying these entities, Abelman knowingly misappropriated the funds to his own use and benefit without the clients' authority in violation of Colo. RPC 8.4(c). Abelman failed to promptly pay persons holding liens on the settlement proceeds in violation of Colo. RPC 1.15(b). In a separate matter, Abelman represented the client to rectify an error in orders entered in a dissolution of marriage action. Abelman failed to fully understand the legal issue presented by his client in violation of Colo. RPC 1.1, and failed to pursue his client's claim diligently in violation of Colo. RPC 1.3. Abelman failed to keep the client reasonably informed about the status of his legal matter and failed to promptly comply with the client's reasonable requests for information in violation of Colo. RPC 1.4(a). Abelman was ordered to pay the costs of the proceedings.

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 600 17TH STREET, SUITE 510-S DENVER, CO 80202</p> <hr/> <p>Complainant: THE PEOPLE OF THE STATE OF COLORADO,</p> <p>Respondent: ALLAN DAVID ABELMAN</p>	<hr/> <p>Case Number: 01PDJ003</p>
<p>REPORT, DECISION AND IMPOSITION OF SANCTION</p>	

Opinion by Presiding Disciplinary Judge Roger L. Keithley and Hearing Board members, Paul J. Willumstad and John T. Baker, both members of the bar.

SANCTION IMPOSED: ATTORNEY DISBARRED

A sanctions hearing pursuant to C.R.C.P. 251.15 was held on September 13, 2001, before the Presiding Disciplinary Judge ("PDJ") and two hearing board members, Paul J. Willumstad and John T. Baker, both members of the bar. Charles E. Mortimer, Jr., Assistant Attorney Regulation Counsel represented the People of the State of Colorado (the "People"). Allan David

Abelman ("Abelman"), the respondent, did not appear either in person or by counsel.

The Complaint in this action was filed February 13, 2001. Abelman did not file an Answer to the Complaint. On March 20, 2001 the People filed a Motion for Default. Abelman did not respond. On May 15, 2001, the PDJ issued an Order granting default, stating that all factual allegations set forth in the Complaint were deemed admitted pursuant to C.R.C.P. 251.15(b), and all violations of The Rules of Professional Conduct ("Colo. RPC") alleged in the Complaint were deemed established, *e.g.*, *People v. Richards*, 748 P.2d 341 (Colo. 1987).

Exhibit 1 was offered by the People and admitted into evidence. The PDJ and Hearing Board considered the People's argument, the facts established by the entry of default, the exhibit admitted, assessed the testimony of the witness and made the following findings of fact which were established by clear and convincing evidence.

I. FINDINGS OF FACT

Abelman has taken and subscribed to the oath of admission, was admitted to the bar of the Supreme Court on May 17, 1976 and is registered upon the official records of this court, registration number 07178. Abelman is subject to the jurisdiction of this court pursuant to C.R.C.P. 251.1(b).

All factual allegations set forth in the Complaint were deemed admitted by the entry of default. The facts set forth therein are therefore established by clear and convincing evidence. See Complaint attached hereto as exhibit 1. The Order entering default also granted default as to the violations of The Rules of Professional Conduct.

II. CONCLUSIONS OF LAW

In the Weller matter, Abelman represented Paul and Leslie Weller in a personal injury matter. On April 21, 2000, respondent deposited the Weller settlement proceeds in the amount of \$228,614.57 into his law office trust account. On April 26, 2000, a check in the amount of \$205,000.00 cleared respondent's trust account. The check was made payable to Mr. Weller, and represented a portion of the settlement proceeds. At the time the settlement proceeds were deposited, respondent understood and agreed that he was to use the balance of the settlement proceeds in the amount of \$23,614.57, to pay three medical providers who had placed liens on the settlement funds, and to pay the balances owed by the Wellers on two other accounts. Abelman did not timely pay the lien holders or the accounts. Of the \$23,614.57 of client funds which Abelman was to use to pay medical providers and other accounts owed by the Wellers, Abelman knowingly misappropriated \$23,276.85 to his own use

and benefit without the clients' authority. Abelman's knowing conversion of the Wellers' funds to his own use and benefit violated Colo. RPC 8.4(c)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). Abelman's failure to promptly pay persons holding liens on the Weller settlement proceeds constitutes a violation of Colo. RPC 1.15(b)(a lawyer shall promptly deliver to the client any funds or other property that the client is entitled to receive).

In the Johnston matter, Abelman represented Terry Johnston as successor counsel in connection with orders entered in a dissolution of marriage action which the client considered inconsistent with the oral agreement entered on the record in open court. Abelman received \$1,000 from the client to undertake efforts to correct the order. Abelman failed to fully understand the legal issue presented by his client and failed to take any action on his behalf, despite twelve letters from the client to Abelman concerning the matter. Abelman failed to pursue his client's claim diligently in violation of Colo. RPC 1.3(a lawyer shall act with reasonable diligence and promptness in representing a client). Abelman failed to keep the client reasonably informed about the status of his legal claim and to promptly comply with the client's reasonable requests for information, in violation of Colo. RPC 1.4(a)(a lawyer shall keep a client reasonably informed about the status of a matter). Abelman failed to provide competent representation in violation of Colo. RPC 1.1(a lawyer shall provide competent representation to a client).

III. ANALYSIS OF SANCTION

The Supreme Court in *People v. Varrallo*, 913 P.2d 1, 11 (Colo. 1996), held:

Knowing misappropriation [for which the lawyer is almost invariably disbarred] "consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking." *In re Noonan*, 102 N.J. 157, 160, 506 A.2d 722 (1986).

Misappropriation includes "not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom." *In re Wilson*, 81 N.J. 451, 455 n. 1, 409 A.2d 1153 (1979).

There is no question in Colorado that knowing conversion of client funds from an attorney's trust account for a lawyer's personal use and benefit without authorization warrants disbarment. See, e.g., *People v. Wallace*, 936 P.2d 1282, 1284 (Colo. 1997); *Varallo*, 913 P.2d at 12. The presumptive sanction for Abelman's knowing conversion in the Weller matter is disbarment.

Abelman's misconduct in the Johnston matter, although not as egregious as his misconduct in the Weller matter, would require a period of suspension.

Determination of the appropriate sanction requires the PDJ and Hearing Board to consider aggravating and mitigating factors pursuant to ABA *Standards* § 9.22 and § 9.32 respectively. Since Abelman did not participate in these proceedings, no mitigating factors were established. The PDJ and Hearing Board considered the following aggravating factors pursuant to ABA *Standard* § 9.22: Abelman has substantial prior discipline consisting of a six month suspension in 1987, *see People v. Abelman*, 744 P.2d 486 (Colo. 1987), and a three year suspension in 1991, *People v. Abelman*, 804 P.2d 859 (Colo. 1991), *see id.* at §9.22(a), a dishonest and selfish motive, *see id.* at §9.22(b), multiple offenses, *see id.* at §9.22(d), and substantial experience in the practice of law, *see id.* at §9.22(i), having been licensed to practice law in the State of Colorado since 1976.

Disbarment is the only appropriate discipline in this case. *See In re Cleland*, 2 P.3d 700, (Colo. 2000)(attorney's actions in knowingly misappropriating client funds and commingling his personal funds with client funds warrants disbarment); *People v. Lavenhar*, 934 P.2d 1355, 1359 (Colo.1997)(lawyer disbarred who knowingly misappropriated check belonging to third party); *People v. Young*, 864 P.2d 563, 564 (Colo.1993)(knowing misappropriation of clients' funds warrants disbarment even absent prior disciplinary history and despite cooperation and making restitution).

IV. ORDER

It is therefore ORDERED:

1. Allan D. Abelman, attorney registration number 07178 is disbarred from the practice of law effective thirty-one days from the date of this Order.
2. Abelman is Ordered to pay the costs of these proceedings; the People shall submit a Statement of Costs within ten (10) days of the date of this Order. Respondent shall have five (5) days thereafter to submit a response thereto.

DATED THIS 18th DAY OF SEPTEMBER, 2001.

ROGER L. KEITHLEY
PRESIDING DISCIPLINARY JUDGE

PAUL J. WILLUMSTAD
HEARING BOARD MEMBER

JOHN T. BAKER
HEARING BOARD MEMBER

EXHIBIT 1

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE</p> <hr/> <p>Complainant: THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondent: ALLAN DAVID ABELMAN</p> <hr/> <p>Charles E. Mortimer, Jr., #16122 Assistant Regulation Counsel John S. Gleason, #15011 Regulation Counsel Attorneys for Complainant 600 17th Street, Suite 200-South Denver, CO 80202 Telephone: (303) 893-8121, x-320 Fax No.: (303) 893-5302</p>	<p>COURT USE ONLY</p> <hr/> <p>Case Number:</p>
<p>COMPLAINT</p>	

THIS COMPLAINT is filed pursuant to the authority of C.R.C.P. 251.9 through 251.14, and it is alleged as follows:

1. The respondent has taken and subscribed the oath of admission, was admitted to the bar of this court on May 17, 1976, and is registered upon the official records of this court, registration No. 07178. He is subject to the jurisdiction of this court in these disciplinary proceedings. The respondent's registered business address is 1700 Broadway, Suite 1800, Denver, Colorado 80290.

The Weller Matter

2. Respondent represented Paul and Leslie Weller in a personal injury matter. On April 21, 2000, respondent deposited the Weller settlement proceeds in the amount of \$228,614.57 into his law office trust account. On April 26, 2000, a check in the amount of \$205,000.00 cleared respondent's trust account. The check was made payable to Mr. Weller, and represented a portion of the settlement proceeds.

3. At the time the settlement proceeds were deposited, respondent understood and agreed that he was to use the balance of the settlement

proceeds in the amount of \$23,614.57, to pay three medical providers who had placed liens on the settlement funds, and to pay the balances owed by the Wellers on two other accounts.

CLAIM I
[Colo. RPC 8.4(c), Conversion]

4. All prior averments are incorporated herein.

5. Respondent did not timely pay the lien holders or the accounts referenced in paragraph 3, above. Of the \$23,614.57 of client funds which respondent was to use to pay medical providers and other accounts owed by the Wellers, respondent misappropriated \$23,276.85 to his own use and benefit. Respondent misappropriated the funds without the clients' authority.

6. Respondent's misappropriation of funds, described above, was knowing. Respondent converted the Wellers' funds to his own use and benefit, in violation of Colo. RPC 8.4(c).

WHEREFORE, complainant seeks relief as set forth more fully below.

CLAIM II
[Colo. RPC 1.15 (b), Failure to promptly pay third parties]

7. All prior averments are incorporated herein.

8. Respondent's failure to promptly pay persons holding liens on the Weller settlement proceeds constitutes a violation of Colo. RPC 1.15(b).

WHEREFORE, complainant seeks relief as set forth more fully below.

The Johnston Matter

9. Respondent represented Terry Johnston as his successor counsel in a dissolution of marriage action. The court entered an order on August 9, 1995 recognizing respondent's entry of appearance.

10. Prior to respondent's entry of appearance, on April 17, 1995, the parties to the dissolution of marriage action had read a stipulation into the record in open court purportedly resolving all matters at issue in the case. Thereafter, a dispute concerning the language of the written separation agreement, which was to memorialize the oral stipulation, ensued. A form of the agreement was submitted to the court and signed by Judge Philips on July 14, 1995, *nunc pro tunc* April 17, 1995. Respondent had no part in the drafting or negotiation of the agreement.

11. On December 12, 1996, Johnston's ex-wife's attorney filed a motion requesting that the court enter certain qualified domestic relations orders dividing certain pension benefits held in Johnston's name, pursuant to the language of the written separation agreement that had been approved by the court. Respondent never responded to the motion. The motion was granted by order dated December 31, 1996. Johnston's ex-wife thereafter filed the qualified domestic relations orders with Johnston's employer, US West.

12. Johnston never saw the motion or the qualified domestic relations orders until they were provided to him by his employer in February 1997. At that time, Johnston realized that the written separation agreement erroneously double-counted certain retirement benefits he owned, resulting in an unintended windfall of \$9,000.00 to \$11,000.00 to his ex-wife.

13. Shortly after realizing the error in the permanent orders, Johnston notified respondent. Respondent told Johnston that he would investigate the matter and advise him of the proper steps to take, if any, to remedy the situation. On May 20, 1997, Johnston wrote a letter to respondent's associate, sending a \$500.00 "retainer" and stating that he understood that she had been working on the "401-K issue." Johnston asked the associate in his letter what documentation she needed to file a motion with the court. The motion referred to in Johnston's letter concerned Johnston's belief that the separation agreement previously signed by the court did not accurately reflect the parties' agreement concerning division of their respective retirement benefits.

14. Johnston paid respondent an additional \$500.00 in October 1997 to work toward a resolution of the issue described above.

15. Respondent failed to fully understand the legal issue presented by Johnston and failed to take any action on his behalf, despite letters from Johnston to respondent concerning the matter on June 17, 1997, June 25, 1997, August 4, 1997, August 11, 1997, September 10, 1997, October 10, 1997, October 13, 1997, December 1, 1997, February 12, 1998, February 15, 1998, March 3, 1998, and May 4, 1999.

CLAIM III
[Colo. RPC 1.3, Neglect of client matter]

16. The averments of paragraphs 1 and 9 through 15 are incorporated herein.

17. Respondent failed to pursue Johnston's claim diligently, in violation of Colo. RPC 1.3.

WHEREFORE, complainant seeks relief as set forth more fully below.

CLAIM IV

[Colo. RPC 1.4(a), Failure to keep client reasonably informed]

18. The averments of paragraphs 1 and 9 through 15 are incorporated herein.

19. Respondent failed to keep Johnston reasonably informed about the status of his legal claim and to promptly comply with Johnston's reasonable requests for information, in violation of Colo. RPC 1.4(a).

WHEREFORE, complainant seeks relief as set forth more fully below.

CLAIM V

[Colo. RPC 1.1, Failure to represent client competently]

20. The averments of paragraphs 1 and 9 through 15 are incorporated herein.

21. Respondent failed to provide competent representation to Johnston in connection with Johnston's claims regarding the permanent orders and qualified domestic relations orders that had been entered, in violation of Colo. RPC 1.1.

WHEREFORE, it is prayed that the respondent be found guilty of violations of various rules of conduct which establish grounds for discipline as provided in C.R.C.P. 251.5, and the Colorado Rules of Professional Conduct and that he be appropriately disciplined and assessed the costs of these proceedings.

