***People v. Dale B. Halling*. 18PDJ055. March 20, 2019.**

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Dale B. Halling (attorney registration number 25320). The disbarment took effect April 24, 2019.

Halling was retained by three separate clients to apply for certain intellectual property patents. Despite his many assurances that the clients' applications and patents were in good standing and no action needed to be taken, Halling had, in fact, knowingly neglected the work he had contracted to do and had abandoned two clients' matters entirely. Further, in two client matters he converted funds that had been earmarked for filing fees. Halling caused all three clients' patents to be deemed abandoned. He neglected to hold client funds in trust and failed to communicate to each client the status of their patent applications. Though disciplinary authorities asked Halling to respond to requests for investigation, he did not do so.

Through his conduct, Halling violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a)(3) (a lawyer shall keep a client reasonably informed about the status of the matter); Colo. RPC 1.15A(a) (a lawyer shall hold client property separate from the lawyer's own property); Colo. RPC 1.16(d) (a lawyer shall protect a client's interests upon termination of the representation, including returning unearned fees to which the client is entitled); 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) (a lawyer shall not 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:** DALE B. HALLING, #25320	Case Number: **18PDJ055**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)	

Dale B. Halling ("Respondent") was hired by three separate clients to patent their inventions. Respondent failed to diligently pursue the patents and to keep each client informed about the status of those patents. He neglected to hold client funds in trust and, most critically, he abandoned two clients and converted two clients' funds earmarked as filing fees. Respondent failed to participate in the disciplinary investigation into his conduct and to participate in this disciplinary proceeding. Respondent's conduct in violation of Colo. RPC 1.3, 1.4(a)(3), 1.15A(a), 1.16(d), 8.1(b), and 8.4(c), warrants disbarment.

I. PROCEDURAL HISTORY

On April 6, 2018, the Colorado Supreme Court immediately suspended Respondent from the practice of law for his failure to cooperate in the disciplinary investigation. Bryon M. Large, Office of Attorney Regulation Counsel ("the People"), filed a complaint with Presiding Disciplinary Judge William R. Lucero ("the Court") on September 5, 2018. That same day, the People sent copies of the complaint and citation by certified mail to Respondent's registered business address.[1] Respondent failed to file an answer. By order dated November 5, 2018, the Court entered default, thereby deeming admitted the allegations and claims in the complaint.

On February 21, 2019, the Court held a sanctions hearing under C.R.C.P. 251.15(b). Large represented the People; Respondent did not appear. During the hearing, the Court considered telephone testimony from Chris Howell[2] and in-person testimony from Marcus Caldwell and Scott Densmore, and admitted the People's exhibits 1-2.

[1] Also on September 5, 2018, the People sent copies of the complaint and citation via certified mail to Respondent at his alternative work address and to three known email addresses.

[2] On February 21, 2019, the Court granted the People's motion to permit Howell's testimony by telephone.

II. ESTABLISHED FACTS AND RULE VIOLATIONS

The Court adopts and incorporates by reference the averments in the admitted complaint, presented here in condensed form. Respondent was admitted to practice law in Colorado on March 16, 1995, under attorney registration number 25320. He is thus subject to the Court's jurisdiction in this disciplinary proceeding.[3]

Caldwell Matter

In July 2011, Marcus Caldwell hired Respondent to patent his invention known as the SuperVee. On July 8, 2011, Respondent executed and sent a fee letter to Caldwell.

On August 25, 2011, Respondent filed with the United States Patent and Trademark Office ("the USPTO") Caldwell's patent application as well as a notice and power of attorney, identifying himself as Caldwell's representative and designating himself as the point of contact with the USPTO. On September 8, the USPTO sent Respondent a notice to correct Caldwell's application, citing deficiencies. Two months later, the USPTO deemed Caldwell's application abandoned for failing to respond to its correction notice.

On May 18, 2012, the USPTO emailed and mailed the abandonment notice to Respondent, reiterating that Caldwell's application had been abandoned for failure to reply to the notice of September 2011. Respondent offered to revive the application and to file for a provisional patent at no cost to Caldwell.

On February 13, 2014, Respondent petitioned the USPTO to revive Caldwell's application. On February 25, the USPTO notified Respondent that his petition had been granted and that it would continue to process Caldwell's application. On May 1, the USPTO sent Respondent a notification, requiring a response.

On December 15, 2014, the USPTO deemed Caldwell's application abandoned for failure to respond to its notice dated May 1, 2014. Respondent once again petitioned to revive Caldwell's application at his own expense. The petition was granted on October 22, 2015. On November 4, 2016, the USPTO emailed Respondent a non-final rejection notice. Later that month, the USPTO received an undeliverable envelope that it had sent to Respondent at his Colorado Springs address.

In January 2017, Caldwell reached out to Respondent regarding the status of his patent application. He was unable to contact Respondent so he contacted the USPTO. He learned for the first time that Respondent had failed to properly process his patent application. Caldwell left several voicemail messages and sent several emails to Respondent between January and March 2017. But Respondent failed to respond.

[3] *See* C.R.C.P. 251.1(b).

On June 14, 2017, the People were able to contact Respondent in their investigation of his conduct. On June 20, Respondent—for a third time—sent to the USPTO and paid for a petition to revive Caldwell's application.

On August 2, 2017, the USPTO notified Respondent that it had once again deemed Caldwell's application abandoned. The USPTO indicated that the application had been abandoned for failure to properly respond to its notification of November 2016.

In February 2018, the People made several additional attempts to contact Respondent via telephone, mail, and email during their investigtion. They were unsuccessful in reaching Respondent.

Respondent's failures placed Caldwell's invention at risk in the marketplace because it was not protected by a patent. Caldwell has generated approximately $250,000.00 in revenue from his design.

In this matter, Respondent violated three Rules of Professional Conduct:

- By failing to act diligently in representing Caldwell before the USPTO and by abandoning Caldwell, Respondent violated Colo. RPC 1.3. This rule requires a lawyer to act with reasonable diligence and promptness when representing a client.

- Respondent violated Colo. RPC 1.4(a)(3), which requires a lawyer to reasonably communicate with a client, in two ways: by failing to advise Caldwell that the USPTO generated notices in his case that required a response and by failing to further advise Caldwell that the USPTO had deemed his patent application abandoned.

- By knowingly failing to respond to the People's numerous requests for information, Respondent violated Colo. RPC 8.1(b). This rule requires a lawyer to respond to a lawful demand for information from a disciplinary authority.

Densmore Matter

On October 31, 2013, an unrelated third party filed a provisional patent application for an invention known as the "Door Deadbolt Reinforcement Device."[4] After that application was filed, Scott Densmore invented a device that would work in tandem with the deadbolt reinforcement device, known as the "Deadbolt Locking Device Manual Safety."[5] In July 2014, Densmore communicated with Respondent about possible representation. Respondent agreed to represent Densmore.

[4] Compl. ¶ 53.
[5] Compl. ¶ 54.

On July 31, 2014, Respondent told Densmore that he had filed with the USPTO a provisional patent application. On August 2, Respondent sent Densmore a copy of the provisional application. On September 3, Respondent gave Densmore a fee engagement letter, stating that he would prepare and file Densmore's patent application for a $5,000.00 flat fee plus an additional $1,715.00 in filing fees. Densmore paid Respondent the full $6,715.00 by September 26.

On October 14, 2014, Respondent filed Densmore's second application with the USPTO and paid a $400.00 filing fee. Respondent and his wife, Kaila Halling, were listed as the filers.

On October 28, 2014, the USPTO notified Respondent that several items were missing from Densmore's second application and set a deadline of two months to provide the missing items. Respondent did not respond to the notice or inform Densmore of it.

On December 10, 2014, Ms. Halling emailed Densmore copies of the original filing receipt and the formal drawings for his files. The two-month deadline to provide missing items had not yet expired, but Respondent did not inform Densmore that any additional action was required on his application.

On June 11, 2015, Densmore emailed Respondent, advising him that he wanted to add clarifications to his pending application. Respondent responded on June 22 but did not mention the USPTO's notice of missing items. On June 30, the USPTO deemed Densmore's application abandoned for failure to respond to the notice of missing items. The letter provided instructions on how to petition to withdraw the holding of abandonment, which had to be filed within the following two months. Respondent did not respond to this letter, nor did he inform Densmore about the letter.

On February 26, 2016, when Densmore called the USPTO to inquire about the status of his application, he learned for the first time about the notice of missing items sent to Respondent in October 2014. Densmore promptly moved the USPTO to revoke Respondent's power of attorney and thereafter represented himself. On March 15, Densmore paid the USPTO an original filing fee of $400.00, a $35.00 late fee, and an $850.00 fee to revive his application despite previously providing Respondent $1,715.00 for filing fees. Respondent failed to forward to the USPTO Densmore's designated filing fees and failed to issue Densmore a refund.

On March 19, 2016, Densmore petitioned to revive his application and also requested the opportunity to respond to the notice of missing items. He also wrote a letter to the USPTO, notifying it of Respondent's failures.

On February 10, 2017, the USPTO dismissed Densmore's petition to revive, indicating that he had two months to file for reconsideration. On March 1, Densmore filed a renewed petition with the USPTO. This petition was eventually granted on May 10, 2017.

On April 5, 2017, Densmore called Respondent's office and spoke to Ms. Halling. He asked for a refund, but Ms. Halling denied that request. Respondent failed to provide Densmore an accounting or invoices regarding his services. A week later, Densmore again spoke with Ms. Halling who told him that he had failed to sign a required declaration, failed to order formal drawings, and failed to sign another required document. But in fact, Densmore had completed all three tasks in 2014, and he provided Ms. Halling proof of his actions.

In February 2018, the People made several attempts to contact Respondent by email, telephone, and mail. He never responded.

In this matter, Respondent violated four Rules of Professional Conduct:

- By failing to pursue Densmore's patent before the USPTO, Respondent violated Colo. RPC 1.3.

- Respondent violated Colo. RPC 1.4(a)(3) by failing to advise Densmore that the USPTO had determined there were deficiencies in his application and by failing to advise Densmore that his patent application had been abandoned.

- By knowingly failing to respond to the People's numerous requests for information, Respondent violated Colo. RPC 8.1(b).

- Respondent violated Colo. RPC 8.4(c), which proscribes a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. He transgressed this rule by knowingly converting the $1,715.00 that Densmore had paid Respondent to use as filing fees, which Respondent never paid to the USPTO or refunded to Densmore.

Howell Matter

Chris Howell, a resident of both the U.S. Virgin Islands and Michigan, invented a tactical lighting device to be used by law enforcement. In January 2013, Howell hired an attorney to file his patent application with the USPTO. That attorney filed the application but closed his practice shortly thereafter, recommending that Howell hire Respondent. Howell retained Respondent and paid him $400.00 by credit card on December 22, 2014.

On January 6, 2015, Ms. Halling sent Howell an email asking for permission to charge his credit card an additional fee. On that same day, Respondent issued an invoice for $2,400.00 to prepare and file a response and to issue an opinion. Howell paid Respondent an additional $2,000.00 on January 13 by credit card.

On January 27, 2015, the USPTO acknowledged receipt of an amendment to Howell's application, which was filed by Respondent. Respondent did not enter his appearance, so all notices were sent to Howell at his residence in the Virgin Islands. On March 18, the USPTO

sent Howell a notice indicating that it was objecting to certain claims made in the amended application due to typographical errors and substantive problems. Howell was given three months to respond. The USPTO has no record of a response.

On June 19, 2015, Respondent invoiced Howell $640.00 for a new application process called a continuation in part ("CIP"). The amount included a $440.00 CIP filing fee and a $200.00 fee for formal drawings. Howell paid the invoice. Despite collecting fees, Respondent failed to file anything.

After August 2015, Howell sent Respondent numerous emails and left voicemail messages requesting an update on his application. When Respondent responded, he said that the application was proceeding and that nothing needed to be done.

On November 3, 2015, the USPTO deemed Howell's application abandoned. The notice was mailed to Howell and indicated that the USPTO had not received a reply to its letter dated March 18. The notice also stated that the USPTO had tried unsuccessfully to reach Respondent on October 15, October 21, and October 28, 2015.

On July 19, 2017, Respondent emailed Howell to inform him that he was closing his law practice. In that email, Respondent stated in part that the USPTO had made it impossible for him to provide a certain level of service, making his law practice stressful and not very fun; that the USPTO unilaterally and without notice cancelled Howell's filing in April 2012; that the USPTO believed its computer systems were hacked by Russians and had cancelled access to its online filing system; that the USPTO had been captured by large corporations and now plays favorites; and that the USPTO's decisions are arbitrary, resulting in incompetent patent laws. Respondent also advised Howell that his patent application was still pending, that no action need be taken, and that Respondent had no access to the USPTO online filing system. He referred Howell to another law firm.

On July 24, 2017, Howell asked Respondent to forward his file to his new attorney. Respondent did not comply. Between August and September 2017, Howell and his new counsel tried to unsuccessfully to obtain the file from Respondent.

In September 2017, Howell contacted the USPTO and learned for the first time that Respondent had failed to respond to the notice of missing items in August 2015 and that his patent application had been abandoned in April 2016. On September 21, 2017, Howell emailed Respondent asking for an immediate response to this information. That same day, Respondent emailed Howell stating, in part, that he had asked Howell to examine his application in 2015; that Howell wanted to add new features to his invention; that Howell had agreed to abandon his application and instead file a CIP to preserve his priority date and cover the new features; that on July 19, 2017, Respondent had informed Howell that his application was alive and no further action was needed. But Howell's application was not "alive" in July 2017, nor were his rights preserved. Respondent also told Howell that he could not access the USPTO online filing system.

The next day, Howell replied, informing Respondent that due to his misconduct, Howell had unknowingly misrepresented the status of his patent to several of his investors. He insisted that Respondent turn over his file to his new counsel and refund all fees paid. Respondent emailed Howell that same day, claiming that he did not have a paper file and that Howell's file could be accessed through the online filing system. Howell again asked for a full refund.

In February 2018, the People made several attempts during their investigation to reach Respondent by telephone, email, and mail. Respondent did not respond.

In this matter, Respondent violated five Rules of Professional Conduct:

- By failing to diligently pursue Howell's patent application before the USPTO and by abandoning his law practice and Howell, Respondent violated Colo. RPC 1.3.

- Respondent violated Colo. RPC 1.4(a)(3) by failing to advise Howell that his patent application had insufficiencies that created a risk that the application would be denied or abandoned and by failing to advise Howell his patent application had been deemed abandoned.

- By failing to hold Howell's fees in a trust account, Respondent violated Colo. RPC 1.15A(a). This rule requires a lawyer to hold client property in the lawyer's possession in connection with a representation separate from the lawyer's property.

- Respondent violated Colo. RPC 1.16(d), which mandates that a lawyer protect a client's interests upon termination of the representation, including by refunding any advance payment or fee or expense that has not been earned or incurred. He contravened this rule by failing to return Howell's unused filing fees upon termination.

- By knowingly failing to respond to the People's numerous requests for information, Respondent violated Colo. RPC 8.1(b).

- Respondent violated Colo. RPC 8.4(c) by knowingly converting the $640.00 Howell gave to him on June 9, 2015.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[6] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[7] When imposing a sanction after a finding of lawyer misconduct, the

[6] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).
[7] *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 violated several obligations entrusted to him, including his duties of diligence, communication, and honesty to his clients. He also violated the duty he owed as a professional to cooperate with disciplinary authorities.

Mental State: The Court's order entering default establishes that Respondent knowingly violated Colo. RPC 8.1(b) and 8.4(c). The admitted facts in the complaint establish a strong inference that he violated the other rules with a knowing state of mind when he failed to act diligently, to respond to his clients' communications, to keep his clients informed about the status of their patent applications, and to hold Howell's fees in trust and to return those fees upon termination. He also knowingly abandoned his law practice and Caldwell and Howell.

Injury: Caldwell testified that he was harmed by Respondent's inaction, including by incurring additional attorney's fees of somewhere between $3,000.00 to $5,000.00 in order to retain subsequent counsel. He also said his patent application was delayed by four years, during which time a competitor designed a similar product, causing Caldwell to lose around $12,000.00 to $13,000.00 in income.

Densmore suffered actual injury due to Respondent's conversion of $1,715.00 of Densmore's money. He also testified that Respondent's misconduct forced him to hire a new attorney, an additional expense of $6,885.00 in attorney's fees. Further, Densmore spent more than 100 hours of his personal time processing his patent himself, which he estimated as a loss of $29,000.00.[8] Further, Respondent's inaction—resulting in the abandonment of Densmore's patent application and a three-year delay—caused Densmore a substantial loss of royalties, which Densmore estimated to be approximately three to four million dollars annually.

Respondent's conversion of $640.00 of Howell's funds caused him actual injury. Howell testified that he also suffered injury to his credibility and reputation because he operated under the mistaken belief that his patent was pending from 2015 to 2017—a fact that he unknowingly misrepresented to investors. As a result, he is concerned that his credibility has been tarnished and that he might be precluded from securing funding for future inventions. Howell's patent is still not protected in the marketplace, and both he and his investors run the risk that a competitor will first file a patent for a similar invention. He testified that he paid Respondent $7,000.00 in attorney's fees for his representation and that as a result he does not have the funds to hire a new attorney.

[8] Densmore, a nonlawyer, testified that he calculated this total using a "conservative" rate for an attorney of $290.00 an hour.

Respondent also injured the legal system by failing to participate in the People's investigation and this disciplinary proceeding.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

Respondent's knowing conversion is addressed by ABA *Standard* 4.11, which calls for disbarment when a lawyer knowingly converts client property and causes injury or potential injury to a client. The Court also looks to ABA *Standard* 4.41, which provides that disbarment is generally appropriate when a lawyer (1) abandons his or her law practice and causes serious or potentially serious injury to a client; (2) knowingly fails to perform services and causes a client serious or potentially serious injury; or (3) engages in a pattern of neglect with respect to client matters, resulting in a client's serious or potentially serious injury.

Though other *Standards* also apply to Respondent's lack of communication, his failure to hold client funds in trust, and his failure to cooperate in the People's investigation, the claims of conversion and abandonment—for which disbarment is the presumptive sanction—are the gravamen of this case, and 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."[9]

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.[10] Seven aggravating factors are present here: Respondent acted with a dishonest or selfish motive; he engaged in a pattern of misconduct in three client matters; he violated multiple rules; he failed to comply with the rules of the disciplinary agency; he refused to acknowledge the wrongful nature of his conduct; he has substantial experience in the practice of law; and he has been indifferent to making restitution.[11] Because Respondent did not participate in this proceeding, the Court knows of only one mitigating factor: no prior discipline.[12]

Analysis Under ABA *Standards* and Colorado Case Law

The Court is aware of the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[13] mindful that "individual circumstances make extremely problematic any meaningful comparison of

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[9] ABA *Annotated Standards for Imposing Lawyer Sanctions* xx.
[10] *See* ABA *Standards* 9.21 & 9.31.
[11] ABA *Standards* 9.22(b)-(e), (g), and (i)-(j).
[12] ABA *Standards* 9.32(a).
[13] *See In re Attorney F.*, 2012 CO 57, ¶ 15; *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).

discipline ultimately imposed in different cases."[14] 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.

Disbarment is without question the appropriate sanction in this case. The Colorado Supreme Court has repeatedly held that knowing conversion of client funds warrants disbarment, except where substantial mitigating factors are present.[15] Here, Respondent knowingly converted client funds from both Densmore and Howell that were designated for filing fees. In both cases, Respondent failed to pay the requisite filings fees. Howell repeatedly demanded a refund, yet Respondent refused to return any portion of these fees.

Respondent not only abandoned his law practice, he also abandoned Caldwell and Howell.[16] He ceased communicating with Caldwell for an unreasonable period of time, despite Caldwell's numerous attempts to contact him. In all three client matters, Respondent promised to perform legal work but then took little or no sustained action, evidencing a pattern of neglect. Case law is clear that when knowing conversion is coupled with abandonment of clients, disbarment is warranted.[17] The Colorado Supreme Court has also noted that where a lawyer then fails to participate in a disciplinary proceeding, disbarment is plainly all the more necessary.[18]

In sum, the settled case law, coupled with the presumptive sanction and the predominance of aggravating factors, supports imposition of disbarment.

IV. CONCLUSION

In this matter, Respondent failed to uphold multiple duties to his clients, most significantly by converting client funds and abandoning two clients. His inactions left his clients' inventions unprotected in the marketplace. Because there is no basis for deviating from the presumptive sanction here, the Court disbars Respondent.

V. ORDER

The Court therefore **ORDERS**:

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[14] *In re Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

[15] *See, e.g., People v. Varallo*, 913 P.2d 1, 10-12 (Colo. 1996).

[16] An attorney's agreement to perform services for a client and subsequent failure to do so, coupled with the attorney's failure to communicate with the client, justifies a finding of abandonment. *See People v. Shock*, 970 P.2d 966, 968 (Colo. 1999) (finding that a lawyer abandoned two clients by failing to complete necessary tasks and failing to communicate with the clients after having agreed to represent them).

[17] *People v. Stevenson*, 979 P.2d 1043, 1045 (Colo. 1999) (disbarring a lawyer who abandoned a client and knowingly converted several hundred dollars of the client's money); *People v. Townshend*, 933 P.2d 1327, 1329 (Colo. 1997) (applying ABA *Standard* 4.41 and collecting cases imposing disbarment for abandonment and conversion); *People v. Kuntz*, 942 P.2d 1206, 1208-09 (Colo. 1997) (disbarring a lawyer who accepted fees from several clients, performed little to no work on their cases, and then abandoned the clients without returning their funds).

[18] *See Stevenson*, 979 P.2d at 1045.

1. **DALE B. HALLING**, attorney registration number 25320, shall be **DISBARRED**. The disbarment will take effect only upon issuance of an "Order and Notice of Disbarment."[19]

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. Within fourteen days of issuance of the "Order and Notice of Disbarment," Respondent **SHALL** comply 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 motion or application for stay pending appeal with the Court **on or before Wednesday, April 10, 2019**. Any response thereto **MUST** be filed within seven days.

5. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** submit a statement of costs **on or before Wednesday, April 3, 2019**. Any response thereto **MUST** be filed within seven days.

6. Respondent **SHALL** pay restitution as follows:[20]

    a. **On or before Wednesday, April 17, 2019**, Respondent **SHALL** pay $1,715.00 to Scott Densmore; and
    b. **On or before Wednesday, April 17, 2019,** Respondent **SHALL** pay $7,640.00 to Chris Howell.

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[19] In general, an order and notice of disbarment 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.

[20] The People request awards of restitution in the following amounts: $3,000.00-$5,000.00 and $12,000.00-$13,000.00 to Caldwell, representing his subsequent attorney's fees and lost income, respectively; $6,685.00, $1,715.00, and $29,000.00 to Densmore, representing his subsequent attorney's fees, the money Respondent converted, and the putative fair market value of Densmore's personal time spent on his matter, respectively; and $7,000.00 and $640.00 to Howell, representing the attorney's fees he paid to Respondent and the money earmarked for filing fees that Respondent converted. The Court will only award restitution, however, for the funds that these three clients paid to Respondent during the course of representation, not for any additional expenditures or losses that resulted from Respondent's misconduct. *See In re Robertson*, 612 A.2d 1236, 1239-40 (D.C. App. 1992) (declining to award consequential damages as restitution and defining restitution as "a payment by the attorney reimbursing a former client for the money, interest, or thing of value that the client has paid or entrusted to the lawyer during the course of representation"); Restatement (Second) of Contracts § 370 cmt. a (1981) ("A party's restitution interest is [the party's] interest in having restored to him [or her] any benefit that he [or she] has conferred on the other party. . . . Restitution is, therefore, available to a party only to the extent that he [or she] has conferred a benefit on the other party."). The Court did not receive any evidence as to how much money Caldwell paid Respondent for attorney's fees and costs during the representation and thus cannot award him any restitution.

DATED THIS 20th DAY OF MARCH, 2019.

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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