***People v. Lauren C. Harutun*. 16PDJ072. March 23, 2017.**

After a sanctions hearing, the Presiding Disciplinary Judge disbarred Lauren C. Harutun (attorney registration number 19097) from the practice of law, effective April 27, 2017.

Harutun knowingly converted over $20,000.00 in client funds held in her trust account. When pressed by disciplinary authorities to account for the discrepancy between her ledgers and her trust account balance, she declined to cooperate and ignored their requests for information.

Harutun's conduct violated Colo. RPC 1.5(f) (a lawyer must keep unearned fees in trust; Colo. RPC 1.15A and former Colo. RPC 1.15(a) (a lawyer must hold unearned client funds separate from the lawyer's own property); Colo. RPC 1.15D(a)(5) and former Colo. RPC 1.15(j)(5) (a lawyer must maintain required records); Colo. RPC 8.1(b) (a lawyer must 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).

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:** LAUREN C. HARUTUN	Case Number: **16PDJ072**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)	

Lauren C. Harutun ("Respondent") knowingly converted over $20,000.00 in client funds held in her trust account. When pressed by disciplinary authorities to account for the discrepancy between her ledgers and her trust account balance, she declined to cooperate and ignored their requests for information. Such misconduct calls for disbarment.

I. PROCEDURAL HISTORY

On September 30, 2016, Alan C. Obye of the Office of Attorney Regulation Counsel ("the People") filed a complaint in this matter with Presiding Disciplinary Judge William R. Lucero ("the Court"), and sent an acceptance of service to Respondent's counsel the same day.[1] On October 20, 2016, the People were told by Respondent's counsel that she was not authorized to accept service on Respondent's behalf. On October 21, 2016, the People mailed a copy of the citation and complaint via certified mail to Respondent at her registered business address.

Respondent failed to answer, and the Court granted the People's motion for default on December 27, 2016. Upon the entry of default, the Court deemed all facts set forth in the complaint admitted and all rule violations established by clear and convincing evidence.[2]

On March 21, 2017, the Court held a sanctions hearing under C.R.C.P. 251.15(b). Obye represented the People; Respondent did not appear. The People's exhibits 1-2 were admitted into evidence. The Court did not receive testimony from any witnesses.

[1] The People have stated that Victoria Lovato, Esq., represents Respondent in other matters and has consulted with Respondent about this case but is not representing Respondent in this formal proceeding.
[2] *See* C.R.C.P. 251.15(b); *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

II. ESTABLISHED FACTS AND RULE VIOLATIONS

The Court adopts and incorporates by reference the averments in the admitted complaint. Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on December 5, 2002, under attorney registration number 34392.[3] She is thus subject to the Court's jurisdiction in this disciplinary proceeding.[4]

Respondent owned her own firm, Harutun Law Firm, P.C.[5] In March 2014, Respondent approached Robert Wareham, Chief Executive Officer, President, and attorney at The Law Center, P.C., to express an interest in associating with The Law Center.[6]

Wareham met with Respondent in early April 2014, and they agreed that Respondent's firm would become "of counsel" to The Law Center, effective that date.[7] Per their agreement, Respondent's firm was to receive a percentage of revenues based on who completed the work.[8] No written agreement was ever drafted to document the terms of the merger between Respondent's firm and The Law Center, however.[9] New files were created for each of Respondent's clients, and their billing was transferred to The Law Center in April 2014.[10] Respondent's clients were notified of the change and were sent written fee disclosures advising them that they were now clients of The Law Center.[11]

On May 13, 2014, Respondent transferred $24,833.96 from her COLTAF account to the Law Center.[12] That sum comprised client retainer funds.[13] Respondent also provided to The Law Center a list of her clients and their COLTAF balances.[14] But the amount of money that Respondent transferred from her COLTAF account did not match the COLTAF accounting that she provided.[15] In fact, Respondent's accounting showed that she should have had more money in the account than was actually transferred.[16]

Over the following few weeks, two staff members of The Law Center, Katherine Wiley (firm administrator) and Jennifer Holschuh (domestic relations case manager), spent dozens of hours trying to reconcile Respondent's accounting.[17] They were unable to apply trust funds to outstanding client balances because they could not be certain which clients

[3] Compl. ¶ 1.
[4] *See* C.R.C.P. 251.1(b).
[5] Compl. ¶ 5.
[6] Compl. ¶¶ 4, 6.
[7] Compl. ¶ 7.
[8] Compl. ¶ 8.
[9] Compl. ¶ 10.
[10] Compl. ¶ 9.
[11] Compl. ¶ 11.
[12] Compl. ¶ 12.
[13] Compl. ¶ 13.
[14] Compl. ¶ 14.
[15] Compl. ¶ 15.
[16] Compl. ¶ 16.
[17] Compl. ¶ 17.

had money in the trust account.[18] In short, they could not reconcile Respondent's COLTAF account statements with the accounting records of the clients, as Respondent had made many disbursements from her COLTAF account without adequate documentation.[19] Wiley and Holschuh determined that the discrepancies totaled more than $20,000.00.[20]

The Law Center then requested on several occasions that Respondent assist with the reconciliation.[21] Respondent came to the office once but was unable to spend enough time with staff to resolve the issue.[22] Around the same time, Respondent was preparing for a vacation to Mexico.[23]

Because Respondent's COLTAF funds could not be applied to her client matters, The Law Center could not pay Respondent her share of fees billed in April and May 2014.[24] The Law Center refused to bill against Respondent's clients' trust funds because there was not enough money in trust to account for all of her clients, and it was impossible to discern which clients had money in trust and which did not.[25]

Respondent called Wareham on June 2, 2014, to express her frustration and her need for cash.[26] The Law Center agreed to advance Respondent $3,500.00 from its operating account as an advance against future revenues.[27] About a week later, however, Wareham emailed Respondent that reconciliation of her COLTAF account was not possible, and that officers of The Law Center had concluded the merger was ill-advised, based on the condition of her COLTAF account.[28] Respondent responded by email on June 15, 2014, stating that she would have her accountant reconcile the account from the beginning.[29] But Respondent never provided Wareham or The Law Center a complete accounting of the funds in her COLTAF account.[30]

On June 17, 2014, Respondent emailed Wareham, informing him that she was leaving The Law Center and opening a firm with attorney Paul LeRoux; that she was living on $3,000.00 per month with three children; that she felt financially ruined; and that her accountant would reconcile her trust account.[31]

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[18] Compl. ¶ 18.
[19] Compl. ¶¶ 19-20.
[20] Compl. ¶ 21.
[21] Compl. ¶ 22.
[22] Compl. ¶ 23.
[23] Compl. ¶ 24.
[24] Compl. ¶ 25.
[25] Compl. ¶ 26.
[26] Compl. ¶ 27.
[27] Compl. ¶ 28.
[28] Compl. ¶ 29.
[29] Compl. ¶ 30.
[30] Compl. ¶ 31.
[31] Compl. ¶ 32.

On July 1, 2014, The Law Center refunded to Respondent the full $24,833.96 that she had earlier transferred to it.[32] Wareham proposed that the merger be unwound, restoring Respondent and The Law Center to their original positions.[33] Under Wareham's proposal, Respondent would return the $3,500.00 advance, and all of her billings would be transferred to her for invoicing.[34] Wareham's corporate counsel made efforts to reach a written separation agreement with Respondent, but she rejected or ignored his overtures.[35]

Because The Law Center's staff refused to bill against the funds transferred from Respondent's COLTAF account, and because those funds were later returned to Respondent, The Law Center had to bill clients directly for work done on her cases.[36] Several clients contacted The Law Center, stating that they had trust funds on deposit with Respondent.[37] Those clients were sent a letter explaining that all funds had been returned to Respondent, and that the funds could not be applied to invoices from The Law Center.[38]

Respondent provided to the People her U.S. Bank COLTAF account statements from January 2013 through October 2014, copies of her COLTAF account reconciliations, and a copy of a document with client names and their purported COLTAF balances.[39] The document purporting to list client COLTAF balances did not accord with the information in the bank statements.[40]

Respondent told the People that on May 31, 2014, she performed an accounting of funds that should have been in her COLTAF account with an accounting software named Clio.[41] Based on this accounting, she said, her account should have held $47,034.94; the balance, however, was approximately half of that.[42] Respondent noted that she had not been able to ascertain why there was a discrepancy between her accounting and her COLTAF account balance.[43] Likewise, neither The Law Center's auditors nor the People's investigators could explain the discrepancy.[44]

In any event, Respondent admitted that there was a shortfall in excess of $20,000.00, which was consistent with The Law Center's audit.[45] Respondent transferred $30,000.00 of her own funds from savings into her COLTAF account on June 24, 2014.[46]

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[32] Compl. ¶ 33.
[33] Compl. ¶ 34.
[34] Compl. ¶ 35.
[35] Compl. ¶ 36.
[36] Compl. ¶ 37.
[37] Compl. ¶ 38.
[38] Compl. ¶ 39.
[39] Compl. ¶ 40.
[40] Compl. ¶ 41.
[41] Compl. ¶ 42.
[42] Compl. ¶ 43 (though paragraph 43 provides the balance was only $23,833.96, the People stated at the sanctions hearing that they assume the number was transcribed in error and should instead read $24,833.96).
[43] Compl. ¶ 44.
[44] Compl. ¶ 45.
[45] Compl. ¶ 46.

On January 18, 2016, the People asked Respondent, through her counsel, to provide by February 18, 2016, all records of client bills from January 2013 through October 2014, so that investigators could compare her billing records against her COLTAF records.[47] Respondent has not done so.[48]

Respondent's conduct described above violated Colo. RPC 1.5(f), which provides that a lawyer must keep unearned fees in trust; Colo. RPC 1.15A (and former Colo. RPC 1.15(a)), which provides that a lawyer must hold unearned client funds separate from the lawyer's own property; Colo. RPC 1.15D(a)(5) (and former Colo. RPC 1.15(j)(5)), which provides that a lawyer must maintain required records; Colo. RPC 8.1(b), which provides that a lawyer must respond to a lawful demand for information from a disciplinary authority; and Colo. RPC 8.4(c), which provides that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[49] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[50] When imposing a sanction after a finding of lawyer misconduct, the 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's conversion of client funds violated her duty of loyalty and her duty to preserve client property.

Mental State: The Court's order entering default establishes that Respondent knowingly violated Colo. RPC 8.4(c). The Court concludes that Respondent likewise acted knowingly when committing the remaining rule violations.

Injury: Respondent caused serious potential injury to her clients, who could have lost their funds had Respondent not replenished her trust account. She also inconvenienced The Law Center staff, which spent dozens of hours attempting to reconcile her accounting with her trust account balance.

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[46] Compl. ¶ 47.
[47] Compl. ¶ 48.
[48] Compl. ¶ 49.
[49] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).
[50] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

ABA *Standards* 4.0-7.0 – Presumptive Sanction

ABA *Standard* 4.11 applies here. That *Standard* calls for disbarment when a lawyer knowingly converts client property and causes injury or potential injury to a client.

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.[51] Two aggravating factors are present here. First, Respondent's knowing conversion of funds evinces a dishonest and selfish motive.[52] Second, Respondent has substantial experience in the practice of law.[53] The Court takes into account two mitigating factors: Respondent has no prior disciplinary history, and she made a timely good faith effort to rectify the consequences of her misconduct by transferring money from her savings to cover the shortfall in her COLTAF account.[54]

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,[55] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[56] 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.

Knowing misappropriation of client funds "consists simply of a lawyer taking a client's money entrusted to [her], knowing that it is the client's money and knowing that the client has not authorized the taking."[57] Misappropriation includes the unauthorized temporary use of client funds for the lawyer's own purposes, whether or not the lawyer derives any personal benefit from that use.[58] When finding knowing conversion, the Court need not determine *how* the attorney used client funds.[59]

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[51] *See* ABA *Standards* 9.21 & 9.31.
[52] ABA *Standard* 9.22(b).
[53] ABA *Standard* 9.22(i).
[54] ABA *Standards* 9.32(a), (d).
[55] *See In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *In re Fischer*, 89 P.3d 817, 822 (Colo. 2004) (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).
[56] *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[57] *People v. Varallo,* 913 P.2d 1, 11 (Colo. 1996).
[58] *Id.*
[59] *People v. Wechsler*, 854 P.2d 217, 220 (Colo. 1993).

The Colorado Supreme Court has made clear that "[i]n situations where a lawyer knowingly misappropriates client funds, the appropriate sanction is typically disbarment."[60] Where conversion of client funds is coupled with other rule violations—particularly the lawyer's failure to cooperate with or respond to a lawful request from the disciplinary authority—the Colorado Supreme Court has had no difficulty concluding that disbarment is warranted.[61]

Here, it is enough to find that Respondent was entrusted with more than $20,000.00 of client funds, which she placed into her COLTAF account, and which later went missing. That she later replenished her COLTAF account with personal savings does not diminish the gravity of having used client funds without the clients' authorization. Because the two mitigating factors does not outweigh the aggravating factors, the Court sees no cause to depart downward from the presumed sanction of disbarment.

IV. CONCLUSION

Respondent could not account for over $20,000.00 in client funds held in her trust account. Though she eventually replenished the trust account with her own savings, she nevertheless knowingly converted funds by using them without authorization from her clients. She then refused to respond to the People's requests for information and declined to participate in this proceeding. Because no compelling evidence in mitigation has been presented, the Court hews to the presumptive sanction in this case and disbars Respondent.

V. ORDER

The Court therefore **ORDERS:**

1. **LAUREN C. HARUTUN**, attorney registration number **34392**, will be **DISBARRED FROM THE PRACTICE OF LAW**. The **DISBARMENT SHALL** take effect only upon issuance of an "Order and Notice of Disbarment."[62]

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.

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[60] *In re Haines*, 177 P.3d 1239, 1250 (Colo. 2008); *see also In re Cleland*, 2 P.3d 700, 703 (Colo. 2000) (holding that the presumed sanction for knowing misappropriation of client funds is disbarment); *People v. Coyne*, 913 P.2d 12, 14 (Colo. 1996) (disbarring a lawyer for misappropriating funds held in escrow and failing to return funds a client had advanced); *Varallo,* 913 P.2d at 11 (finding that lawyers are "almost invariably disbarred" for knowing conversion of client funds, regardless of whether the lawyer intended to permanently deprive the client of those funds); *cf. In re Fischer,* 89 P.3d 817, 822 (Colo. 2004) (noting that mitigating factors may warrant a departure from a presumption of disbarment in some cases).

[61] *See, e.g., In re Stevenson*, 979 P.2d 1043, 1045 (Colo. 1999).

[62] 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.

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

4. The parties **MUST** file any posthearing motion or application for stay pending appeal **on or before Thursday, April 13, 2017.** Any response thereto **MUST** be filed within seven days.

5. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a statement of costs **on or before Thursday, April 6, 2017**. Any response thereto **MUST** be filed within seven days.

DATED THIS 23rd DAY OF MARCH, 2017.

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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