

*People v. Lindemann*, No.03PDJ066. June 2, 2004. Attorney Regulation. Following a sanctions hearing at which Respondent did not appear, the Hearing Board disbarred Respondent, attorney registration number 19292, from the practice of law, effective July 3, 2004. Respondent was retained by several clients for whom Respondent failed to deliver services in a timely and satisfactory manner in violation of Colo. RPC 1.3, failed to return calls and keep his clients informed of the status of their cases, in violation of Colo. RPC 1.4(a), and engaged in dishonest conduct by knowingly delaying the return of property belonging to clients, in violation of Colo. RPC 1.16(d) and Colo. RPC 8.4(c). Respondent was under suspension for similar conduct in several other client incidents.

SUPREME COURT, STATE OF COLORADO  ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 600 17 <sup>TH</sup> STREET, SUITE 510-S DENVER, CO 80202	
<b>Complainant:</b> THE PEOPLE OF THE STATE OF COLORADO,  <b>Respondent:</b> WARD F. LINDEMANN.	Case Number: <b>03PDJ066</b>
<b>REPORT, DECISION AND IMPOSITION OF SANCTION</b>	

The Presiding Disciplinary Judge, William R. Lucero, and Hearing Board members Helen R. Stone and Paul J. Willumstad, both members of the bar, issue the following opinion.

**SANCTION IMPOSED: ATTORNEY DISBARRED**

**I. BACKGROUND**

On September 18, 2003, the People of the State of Colorado (“People”/ “Petitioner”) filed a complaint in this matter and sent the Citation and Complaint to Ward F. Lindemann (“Lindemann” / “Respondent”) via regular and certified mail. On October 20, 2003, the People filed Proof of Service. The Proof of Service shows that the Citation and the Complaint were sent to Lindemann’s registered business address (there are no other known addresses

for Lindemann) and that the certified copy of the Complaint was delivered on September 19, 2003, at 1:28 p.m. The regular mail copy of the Complaint was not returned. Lindemann failed to file an answer or otherwise respond to the complaint.

The claims against Lindemann<sup>1</sup> grew out of complaints from three different clients for whom it was alleged Respondent failed to deliver contracted services in a timely and satisfactory manner, failed to return calls and keep his clients informed of the status of their cases, and engaged in dishonest conduct by knowingly delaying the return of or converting property belonging to clients.

In the first matter, Gregory, the Complaint alleged that Lindemann failed to provide legal services for an action against Gregory's former husband for which Lindemann had accepted a retainer. After the lapse of many months, when it became apparent that Lindemann either would or could not deliver the contracted services, he was no longer employed and unable to refund to Gregory the retainer.

In the second matter, Mahan, Lindemann represented Raymond Mayhan in a marriage dissolution action in which the final orders were entered on December 6, 2000. Subsequently Mr. Mahan and his former wife litigated disputes arising out of court orders connected with the divorce, which included a court-ordered payment by Mahan to his ex-wife and the processing of a domestic relations order ("DRO") related to Mrs. Mahan's interest in a public school retirement system. Lindemann did not prepare and file the DRO until December 2001. He filed the order without opposing counsel's signature and misrepresented the circumstances under which the court could enter the order. Lindemann also did not return to his client until June 2003 a pearl necklace that opposing counsel provided in April or May 2002 as part of the property distribution from the divorce action.

In the third matter, Andreen hired Lindemann to represent him when he was notified by a County Child Support Enforcement Unit that his court-ordered child payment was still owing. According to the client, the payment was made but not credited. Andreen gave Lindemann a retainer. Lindemann

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<sup>1</sup> The three client incidents which form the basis for the charges against Respondent in the instant case occurred during the same general time period, 1999 – 2002, as the client problems charged in the earlier case, *People v. Lindemann*, 02PDJ073 (2002). In the 2002 proceeding, involving charges related to five separate client incidents, Respondent cooperated with the Office of Regulatory Counsel and entered into a Conditional Admission of Misconduct, filed September 6, 2002, in which Respondent agreed to suspension for a year and a day. The court assumes that had the Office of Regulation Counsel been aware of the client issues charged in the current complaint, it may not have entered into the 2002 Conditional Admission of Conduct, or it may have demanded a greater sanction than suspension for a year a day. In this case, OARC is asking that Respondent be disbarred.

failed to notify Andreen of a scheduled hearing and the legal consequences of Andreen's failure to appear at the hearing. Lindemann also failed to notify Andreen that Lindemann had withdrawn opposition to an amount in arrears.

On November 10, 2003, the People moved for default on the claims set forth in the complaint. The People sent a copy of the Motion for Default to Lindemann at his registered business address via certified mail. Lindemann did not respond.

On December 19, 2003, then Presiding Disciplinary Judge Roger L. Keithley entered an order of default on the Complaint, a copy of which was sent to Lindemann by first class mail at his registered business address. All factual allegations set forth in the Complaint are deemed admitted by the entry of default pursuant to C.R.C.P. 251.15(b) and are therefore established by clear and convincing evidence. *E.g. People v. Richards*, 748 P.2d 341 (Colo. 1987). *See also* the Complaint attached hereto as Exhibit 1.

On January 2, 2003, the People sent a Confirmation of Sanctions hearing to Lindemann by certified and regular mail at his business address. The confirmation stated that the sanctions hearing was scheduled for April 6, 2003 at 9:00 a.m. for one-half day.

A sanctions hearing pursuant to C.R.C.P. 251.15(b) was held on April 6, 2004, before the hearing board. James C. Coyle, Deputy Regulation Counsel, represented the People. Lindemann did not appear in person or by counsel.

## **II. FINDINGS AND CONCLUSIONS**

The Hearing Board considered the People's argument, the facts established by the entry of default, and three exhibits offered by the People and admitted into evidence: the Disciplinary Report of Investigation of this matter, a true copy of the Respondent's attorney registration, and a letter addressed to the Respondent at the address listed with his attorney registration confirming the date and place of the sanctions hearing. Based upon the forgoing the Hearing Board made the following findings and conclusions, which were established by clear and convincing evidence.

Ward F. Lindemann has taken and subscribed the oath of admission, was admitted to the bar of the Colorado Supreme Court on April 27, 1990, and is registered upon the official records of the Supreme Court, registration number 19292. He is therefore subject to the jurisdiction of this Court pursuant to C.R.C.P. 251.1(b).

The facts established by the entry of default prove the following misconduct:

**Colo. RPC 1.3**

**A lawyer shall act with reasonable diligence and promptness in representing a client and shall not neglect a legal matter entrusted to that lawyer.**

In the Gregory matter, Respondent failed to timely prepare and file Ms. Gregory's pleadings, failed to communicate adequately with her between September 2001 and June 2002, failed to search for, locate and serve Ms. Gregory's ex-husband, failed to take any further action or communicate with her on the case after June 2002, and failed to notify her of his change of office location and closing.

In the Mahan matter, Respondent failed to timely prepare and file the domestic relations order and failed to account for or timely return the pearl necklace.

In the Andreen matter, Respondent failed to advise his client of the August 9, 2001 hearing date.

This conduct violated Colo. RPC 1.3.

**Colo. RPC 1.4(a)**

**A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.**

In the Gregory matter, Respondent failed to respond to Ms. Gregory's reasonable requests for information, failed to inform her of his lack of diligence on her case, failed to notify her of his effective termination of representation and his office move and/or closing, and failed to maintain minimum communications with her through the course of the representation.

In the Mahan matter, Respondent failed to respond to the client's reasonable requests for information between January and July 2001, as well as from July 2001 through December 2001, failed to inform Mahan of the receipt of pearl necklace, and failed to maintain minimum communications with Mahan throughout the course of the representation.

In the Andreen matter, Respondent failed to keep the client informed about the hearing date on August 9, 2001 and failed to inform the client of the potential consequences of his failure to appear at the hearing.

This conduct violated Colo. RPC 1.4(a).

**Colo. RPC 1.16(d)**

**Upon termination, a lawyer shall take steps to protect a client's interest and surrender papers and property to the client.**

In the Gregory matter, Respondent effectively terminated the attorney-client relationship by failing to communicate with the client despite the client's numerous attempts to communicate with Respondent and by failing to provide the services for which the client contracted. The Respondent failed to return the client's files and papers and any portion of the \$1,200 retainer, not all of which had been earned.

This conduct violated Colo. RPC 1.4(a).

**Colo. RPC 8.4(c)**

**A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation (knowing conversion)**

In the Gregory matter, Respondent exercised dominion or ownership over funds held in trust on behalf of the client. Respondent did not earn at least \$800 of the \$1,200 retainer paid by the client. The client did not consent to Respondent's use of these funds for any purposes other than on the client's behalf. The Respondent thus converted or misappropriated funds belonging to the client.

This conduct violated Colo. RPC 8.4(c).

**Colo. RPC 1.5(b)**

**A lawyer shall provide written communication of the basis or rate of the fee.**

Colo. RPC 1.5(b) provides that, where a lawyer has not regularly represented a particular client, the basis or rate of the fee shall be communicated to the client, in writing before or within a reasonable time after commencing representation. In the Mahan matter, Respondent had not previously represented Mr. Mahan. Yet the Respondent did not prepare a written fee agreement for the client, nor did he prepare any other writing that outlined the basis or rate of the fee before or within a reasonable time after commencing representation.

The Hearing Board finds that all the foregoing instances of misconduct caused injury or potential injury to Lindemann's clients.

This conduct violated Colo. RPC 1.5(b).

**III. SANCTIONS**

The ABA *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) (“ABA *Standards*”) is the guiding authority for selecting the appropriate sanction to impose for lawyer misconduct. ABA *Standard* 4.11 provides that disbarment is generally appropriate when a lawyer knowingly converts client property and, through his or her misconduct, causes injury or potential injury to a client.

ABA *Standard* 4.41 provides that disbarment is generally appropriate when a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client, or engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

Under prior precedent, the Supreme Court held that the *presumed sanction* for knowing conversion of client funds is disbarment. (Emphasis added) See *People v. Varallo*, 913 P.2d 1 (Colo. 1996). Standing alone, however, Lindemann’s conversion of client funds in the Gregory matter might not warrant disbarment. See *In the Matter of Fischer*, 2004 WL 1041598 (Colo.). In *Fischer*, the Court stated, “Even ‘knowing conversions’ of funds entrusted to attorneys do not always present the same need for sanctions.” *Id.* at \*5. Among the factors considered in *Fischer*, the Court weighed Respondent’s expressions of remorse, cooperation with the Office of Attorney Regulation, payment of restitution, and personally accepting responsibility for any losses the client suffered.

Respondent did not participate in this proceeding. He also did not pay restitution or present evidence of remorse in this proceeding as he did in the previous case that resulted in the suspension of a year and a day. Further, the timing of the events leading to the present grievance appears to be part and parcel of the events that resulted in the previous discipline.

In his client dealings, Lindemann has demonstrated a pattern of neglect and failure to communicate in the three matters charged in the instant complaint consistent with the five client problems underlying the discipline in the 2002 case. In both cases, Respondent’s conduct demonstrates that he effectively abandoned his clients and responsibilities by failing to perform specific tasks his clients assigned him. Respondent’s withholding of the portion of a retainer he did not earn might not, standing alone, warrant disbarment. However, the totality of facts in the three matters before this Hearing Board taken with the five client problems from the earlier case demonstrates that Respondent has deserted, rejected or relinquished his professional responsibilities owed to the individuals who paid for his services and relied on him. *E.g. People v. Murray*, 887 P.2d 1016, 1021 (Colo. 1994) and *People v. Dulaney*, 785 P.2d 1302, 1306 (Colo.1990).

The Hearing Board considered aggravating and mitigating factors pursuant to ABA *Standards* 9.22 – 9.32, respectively, in arriving at the appropriate sanction. In aggravation: Lindemann has:

- A prior disciplinary record involving a suspension for one year and one day for similar conduct, *id.* at 9.22(a). Nevertheless, the Hearing Board did not consider Lindemann's prior record because the conduct with which he is now charged appears to be part of the same episode during the same timeframe during which he was previously charged and for which he received a year and a day suspension.;
- A dishonest or selfish motive, *id.* at 9.22(b) in that he has not made restitution of the part of the retainer he received in the Gregory matter which he acknowledges he did not earn. However, there is insufficient evidence to find that Respondent acted with the intent to avoid paying restitution. Rather, the evidence suggests that Respondent may have had the ability to pay rather than he refused to pay.
- A pattern of misconduct, *id.* at 9.22(c) and multiple offenses, *id.* at 9.22(d), in all client incidents in which he failed to communicate with clients promptly and effectively and failed to handle matters diligently. While Respondent's prior discipline for similar conduct was not considered pursuant to *id.* at 9.22(a), it demonstrates a clear pattern of misconduct under *id.* at 9.22(c).

In mitigation, though no evidence was presented on this issue, the complaint indicated that after an extended delay Lindemann returned the pearl necklace to his client Mahan. While Lindemann was not present at the hearing to present any other evidence of mitigation, in response to an inquiry from the Hearing Board concerning the Respondent's physical and/or mental condition, Regulation Counsel indicated that Respondent claimed he suffered from sleep apnea and/or depression as late as September 25, 2002, the date of his prior discipline.

Notwithstanding this, Respondent knowingly took a retainer from his client Ms. Gregory but failed to provide the services for which the retainer was paid and to return the unearned portion of the retainer to his client. Consequently, Respondent converted these funds in violation of Colo. RPC 8.4(c). Respondent also failed to turn over in a timely fashion property belonging to his client Mr. Mahan. Finally, Respondent failed to keep his clients properly informed. The Hearing Board finds that this conduct is part of a pattern and practice of dishonesty, abandonment and neglect in violation of ABA *Standard* 4.41.

Since the Respondent has failed to participate in this proceeding or otherwise offer some mitigation or explanation for the pattern of abandonment,

including the conversion discussed above, the Hearing Board has little choice but to recommend disbarment based upon the record presented.

#### **IV. ORDER**

It is therefore ORDERED:

1. Respondent, Ward F. Lindemann, attorney registration 19292, is DISBARRED from the practice of law effective thirty-one days from the date of this Order.

2. Ward F. Lindemann shall pay the costs of these proceedings. The People shall submit a Statement of Costs within fifteen (15) days of the date of this Order. Respondent shall have ten (10) days thereafter to submit a response thereto.

3. Lindemann is further ordered to reimburse Ms. Gregory the sum of \$800.00, plus statutory interest from January 1, 2003, within thirty (30) days of the date of this Order. If the Colorado Attorney Fund for Client Protection has already paid restitution to Ms. Gregory, the Respondent shall reimburse said fund \$800.00, plus statutory costs to the fund within thirty (30) days of this Order.



DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004.

(SIGNED)

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WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE

(SIGNED)

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HELEN R. STONE  
HEARING BOARD MEMBER

(SIGNED)

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PAUL J. WILLUMSTAD  
HEARING BOARD MEMBER

Copies to:

James C. Coyle                      Via Hand Delivery  
Office of Attorney Regulation Counsel

Ward F. Lindemann                Via First Class Mail  
Respondent  
PMB 137  
445C Cheyenne Mountain Blvd.  
Colorado Springs, CO 80906-4570

Helen R. Stone                      Via First Class Mail  
Paul J. Willumstad                Via First Class Mail  
Hearing Board Members

Mac Danford                        Via Hand Delivery  
Colorado Supreme Court



<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 600 17<sup>th</sup> Street, Suite 510-South Denver, Colorado 80202</p> <hr/> <p>Complainant: THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondent: WARD F. LINDEMANN</p> <hr/> <p>James C. Coyle, #14970 Deputy Regulation Counsel John S. Gleason, #15011 Regulation Counsel Attorneys for Complainant 600 17<sup>th</sup> Street, Suite 200-South Denver, Colorado 80202</p> <p>Telephone: (303) 893-8121 ext. 328 Fax No.: (303) 893-5302</p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 03PDJ066</p>
<p><b>COMPLAINT</b></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:

**Jurisdiction**

1. The respondent has taken and subscribed the oath of admission, was admitted to the bar of this court on April 27, 1990, and is registered upon the official records of this court, registration no. 19292. He is subject to the jurisdiction of this court in these disciplinary proceedings. The respondent's registered business address is PMB 137, 445C East Cheyenne Mountain Boulevard, Colorado Springs, Colorado 80906-4570.

The Gregory Matter-General Allegations

2. Sylvia S. Gregory hired the respondent in September 2001 on a child support matter. At that time, Ms. Gregory gave the respondent a \$1,200.00 retainer. An attorney-client relationship was formed, thereby forming an

obligation to perform the agreed-upon services. By agreeing to perform the requested services, the respondent inherently represented that he would provide the services in accordance with the Colorado Rules of Professional Conduct.

3. Ms. Gregory had difficulty contacting the respondent. Ms. Gregory left him messages asking for updates on her case. Upon information and belief, the respondent received Ms. Gregory's messages, but did not return this client's telephone calls.

4. The respondent drafted the necessary pleadings on December 3, 2001. The respondent failed to file these pleadings at that time, however. The respondent failed to notify his client of his delay in filing the pleadings.

5. The respondent filed the pleadings in May 2002.

6. On June 7, 2002, the respondent met with Ms. Gregory on her matter. The respondent informed Ms. Gregory that he was unable to locate and serve her ex-husband, but was still working on it. The respondent told Ms. Gregory that he would do a search for Mr. Gregory but that such search would cost \$80.00, and he would bill her for such cost. Ms. Gregory agreed to such expenditure.

7. The respondent failed to search for or locate the ex-husband and failed to serve papers on him. The respondent took no further action in Ms. Gregory's case.

8. Ms. Gregory again attempted on many occasions to contact and speak with the respondent. The respondent failed to return Ms. Gregory's calls or further communicate with Ms. Gregory. Six months later in December 2002, Ms. Gregory learned that the respondent had moved out of his office. The respondent had failed to notify Ms. Gregory of his move or of any new office address or the closing of his old office address

9. By failing to take any further action on behalf of Ms. Gregory and by failing to communicate with her, the respondent effectively terminated his representation of her legal interests. Despite this, the respondent failed to notify Ms. Gregory that he would take no further action, failed to surrender papers and property to which she was entitled, and failed to refund any advance payment of fee that had not been earned by him.

10. The respondent agreed that his services conferred no benefit on Ms. Gregory, and at one time agreed to refund her \$1,200.00. The respondent admitted that he no longer has such funds, is presently unemployed and now unable to pay Ms. Gregory. The respondent has thus admitted that he took

such funds for his own use. The respondent did not have authorization from Ms. Gregory's to use such funds prior to earning the same. The respondent has not returned these taken client funds as of the date of the filing of this complaint.

**CLAIM I**

**[A Lawyer Shall Act With Reasonable Diligence and Promptness in Representing a Client and Shall Not Neglect a Legal Matter Entrusted to that Lawyer - Colo. RPC 1.3]**

11. Paragraphs 1 through 10 are incorporated herein as if fully set forth.

12. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client, and that a lawyer shall not neglect a legal matter entrusted to that lawyer.

13. The respondent failed to act with reasonable diligence and promptness and neglected the client's legal matter in each of the following respects:

- a. by failing to prepare and file Ms. Gregory's pleadings in a timely manner;
- b. by failing to communicate adequately with Ms. Gregory between September 2001 and June 2002;
- c. by failing to search for, locate and serve Ms. Gregory's ex-husband;
- d. by failing to take any further action on Ms. Gregory's case after June 7, 2002;
- e. by failing to communicate with Ms. Gregory after June 2002; and
- f. by failing to notify Ms. Gregory of his change of office location, and/or closing.

The respondent was required to complete each of the specific tasks described above. Each of these failures by the respondent constitutes a separate incident of lack of diligence and promptness, and/or neglect, as do all of them together.

14. The respondent knew or should have known that his lack of diligence and promptness, and/or neglect continued to occur over a period of

months and involved a pattern and practice of lack of diligence and promptness, and/or neglect.

15. The respondent's lack of diligence and promptness, and/or neglect caused serious or potentially serious injury to the client.

16. The respondent's pattern and practice of failing to accomplish his professional tasks for the client, coupled with the failure to communicate with the client, and failure to refund client funds, constitutes abandonment of the professional responsibilities owed to the client. The totality of facts demonstrates that the respondent effectively deserted, rejected and/or relinquished the professional responsibilities owed to the client.

17. By such conduct, the respondent violated Colo. RPC 1.3.

WHEREFORE, the complainant prays at the conclusion hereof.

#### **CLAIM II**

#### **[A Lawyer Shall Keep A Client Reasonably Informed About the Status of a Matter, Promptly Comply With Reasonable Requests for Information - Colo. RPC 1.4(a)]**

18. Paragraphs 1 through 10 are incorporated herein as if fully set forth.

19. Colo. RPC 1.4(a) provides that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

20. This respondent failed to keep the client reasonably informed about the status of the legal matter and failed to comply promptly with reasonable requests for information in the following respects:

a. by failing to respond to Ms. Gregory's reasonable requests for information;

b. by failing to inform the client of his lack of diligence on her case;

c. by failing to notify the client of his effective termination of representation and his office move and/or closing;

d. and by failing to maintain minimum communications with the client throughout the course of the representation.

Each of these failures to communicate adequately with the client constitutes a separate violation of Colo. RPC 1.4(a) as do all of them together.

21. The respondent knew or should have known that he had failed to communicate adequately with his client over an extended period of months.

22. The respondent's pattern and practice of failing to communicate with the client caused serious or potentially serious injury to the client.

23. The respondent's failure to communicate on these matters, coupled with the failure to accomplish professional tasks on behalf of the client, and failure to refund client money, constitutes abandonment of the professional responsibilities owed to the client. The totality of facts demonstrates that the respondent effectively deserted, rejected and/or relinquished the professional responsibilities owed to the client.

24. By such conduct, the respondent violated Colo. RPC 1.4(a).

WHEREFORE, the complainant prays at the conclusion hereof.

### **CLAIM III**

#### **[Upon Termination, a Lawyer Shall Take Steps to Protect a Client's Interest and Surrender Papers and Property to the Client - Colo. RPC 1.16(d)]**

25. Paragraphs 1 through 10 are incorporated herein as if fully set forth.

26. Colo. RPC 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that had not been earned.

27. The respondent effectively terminated the attorney-client relationship by failing to communicate with the client despite the client's numerous attempts to communicate with the respondent, and by failing to take any other action on behalf of the client.

28. The respondent failed to give the client notice that he had abandoned the representation, failed to advise the client to obtain other counsel, and otherwise failed to take steps to protect the client's interest.

29. Respondent failed to return the client's files and papers.

30. The respondent failed to return to the client any portion of the \$1,200.00 retainer, not all of which had been earned.

31. By such conduct, the respondent violated Colo. RPC 1.16(d).

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM IV**

**[A Lawyer Shall Not Engage in Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation (Knowing Conversion) - Colo. RPC 8.4(c)]**

32. Paragraphs 1 through 10 are incorporated herein as if fully set forth.

33. Colo. RPC 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

34. The respondent exercised dominion or ownership over funds held in trust on behalf of this client. The respondent had not yet earned at least \$800.00 of these funds at the time he took these funds.

35. The respondent did not have the consent of the client to use the client funds for his own purposes, or any other purpose other than this client's purpose.

36. Through the unauthorized exercise of dominion or ownership over client funds as described above, the respondent knowingly converted or misappropriated funds belonging to the client.

37. Through his knowing conversion or misappropriation of client funds, the respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

38. By such conduct, the respondent violated Colo. RPC 8.4(c).

WHEREFORE, the complainant prays at the conclusion hereof.

**The Mahan Matter-General Allegations**

39. The respondent represented Raymond Mahan in *In re the Marriage of Mahan*, OODR1036. A decree of dissolution of marriage was entered on November 15, 2000. Final orders were entered on December 6, 2000.



40. Subsequently, the parties litigated enforcement of a court-ordered payment of \$60,000.00 by Raymond Mahan to his wife. In addition, a domestic relations order (“DRO”) for the Michigan Public School Employees Retirement System had to be entered, voiding the joint survivor option chosen at retirement as to Mr. Mahan’s ex-wife.

41. An attorney-client relationship had been formed between Mr. Mahan and the respondent, thereby forming an obligation on the part of the respondent to perform all agree-upon services. By agreeing to perform the requested services, the respondent inherently represented that he would provide the services in accordance with the Colorado Rules of Professional Conduct.

42. In January 2001, Mr. Mahan provided the respondent with the Michigan Public School’s standard DRO so that the respondent could prepare the necessary order for court signature.

43. Subsequently, Mr. Mahan was unable to communicate with the respondent. Despite attempts to contact the respondent, and despite the fact that the respondent knew of Mahan’s attempts to speak with him, the respondent did not return Mr. Mahan’s calls.

44. In July 2001, the respondent and Mr. Mahan discussed the DRO. At that time, the respondent stated that he did not recall being provided a copy of the standard DRO and needed another copy. Mr. Mahan then provided the respondent with an additional copy of the Michigan Public School’s standard DRO.

45. The respondent did not prepare the DRO until December 2001. The DRO was filed on December 5, 2001. Opposing counsel’s signature was not on said document when the respondent filed the document. In the respondent’s notice of filing, the respondent informed the court that the order could be signed after 15 days if no objection was received from opposing counsel.

46. In addition, the respondent’s office received a pearl necklace from opposing counsel as part of the property distribution in April or May 2002. Mr. Mahan received information regarding the respondent’s receipt of the pearl necklace from the respondent’s legal assistant at that time.

47. The respondent failed to timely return the pearl necklace to his client. The respondent was notified of his client’s claim regarding the pearl necklace no later than the date he received a copy of the request for

investigation on or about March 5, 2003. The respondent nevertheless failed to return such necklace.

48. The respondent returned the pearl necklace to Mr. Mahan in late June, 2003.

**CLAIM V**

**[A Lawyer Shall Act With Reasonable Diligence and Promptness in Representing a Client and Shall Not Neglect a Legal Matter Entrusted to that Lawyer - Colo. RPC 1.3]**

49. Paragraphs 39 through 48 are incorporated herein as if fully set forth.

50. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client, and that a lawyer shall not neglect a legal matter entrusted to that lawyer.

51. The respondent failed to act with reasonable diligence and promptness and neglected the client's legal matter in each of the following respects:

a. by failing to timely prepare or file the DRO;

b. by failing to account for or return the pearl necklace to the client in timely fashion.

The respondent was required to complete each of the specific tasks described above. Each of these failures by the respondent constitutes a separate incident of lack of diligence and promptness, and/or neglect, as do all of them together.

52. The respondent knew or should have known that his lack of diligence and promptness, and/or neglect continued to occur over a period of months and involved a pattern and practice of lack of diligence and promptness, and/or neglect.

53. The respondent's lack of diligence and promptness, and/or neglect caused injury or potential injury to the client.

54. By such conduct, the respondent violated Colo. RPC 1.3.

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM VI**

**[A Lawyer Shall Keep A Client Reasonably Informed About the Status of a Matter, and Promptly Comply With Reasonable Requests for Information - Colo. RPC 1.4(a)]**

55. Paragraphs 39 through 48 are incorporated herein as if fully set forth.

56. Colo. RPC 1.4(a) provides that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

57. This respondent failed to keep the client reasonably informed about the status of the legal matter and failed to comply promptly with reasonable requests for information in the following respects:

a. by failing to respond to the client's reasonable requests for information between January and July 2001, as well as from July 2001 through December 2001.

b. by failing to inform the client of his office's receipt of the pearl necklace;

c. and by failing to maintain minimum communications with the client throughout the course of the representation.

Each of these failures to communicate adequately with the client constitutes a separate violation of Colo. RPC 1.4(a) as do all of them together.

58. The respondent knew or should have known that he had failed to communicate adequately with his client over an extended period of months.

59. The respondent's pattern and practice of failing to communicate with the client caused serious or potentially serious injury to the client.

60. By such conduct, the respondent violated Colo. RPC 1.4(a).

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM VII**

**[Failure to Provide Written Communication of the Basis or Rate of the Fee - Colo. RPC 1.5(b)]**

61. Paragraphs 39 through 48 are incorporated herein as if fully set forth.

62. Colo. RPC 1.5(b) provides that, where a lawyer has not regularly represented a particular client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

63. The respondent did not prepare a written fee agreement for the client, nor did the respondent prepare any other writing that outlined the basis or rate of the fee before or within a reasonable time after commencing the representation. The respondent had not previously represented this client in any other matter.

64. By such conduct, the respondent violated Colo. RPC 1.5(b).

WHEREFORE, the complainant prays at the conclusion hereof.

#### The Andreen Matter-General Allegations

65. Edward J. Andreen was involved in a paternity hearing that took place in El Paso County District Court on January 15, 1999. In that hearing, Mr. Andreen was ordered to pay child support and a lump sum of \$3,449.00, which Mr. Andreen paid. Mr. Andreen states he made the court-ordered payment. Nevertheless, Mr. Andreen was notified by the El Paso County Child Support Enforcement Unit ("CSE") that he still owed the \$3,449.00.

66. Mr. Andreen hired the respondent to represent him regarding the CSE claim. Mr. Andreen paid the respondent \$1,000.00. The respondent entered his appearance in the paternity action on April 27, 2000. Thus, an attorney-client relationship was formed, thereby forming an obligation to perform the agreed-upon services. By agreeing to perform the requested services, the respondent inherently represented that he would provide the services in accordance with the Colorado Rules of Professional Conduct.

67. On June 14, 2001, the respondent filed a motion to declare arrearage paid in full in *In re the Interest of Maryl Seamster and Edward Andreen*, Case No. 96JV3445.

68. On July 17, 2001, the El Paso County District Court entered an order that the judgment against Mr. Andreen had been previously satisfied.

69. The court reserved the issue of retroactive child support owed to the mother, including whether Mr. Andreen was entitled to credit for a misapplied payment of funds made by the El Paso County Child Support Enforcement Unit. A hearing was set for August 9, 2001, before the District Court Magistrate to handle such issue.

70. The respondent failed to advise his client of the August 9, 2001, hearing. Mr. Andreen failed to show at such hearing. The matter was continued to September 13, 2001.

71. Prior to the September 13, 2001, hearing, Mr. Andreen, through the respondent, withdrew opposition to a calculation of \$639.00 in arrears.

**CLAIM VIII**

**[A Lawyer Shall Act With Reasonable Diligence and Promptness in Representing a Client and Shall Not Neglect a Legal Matter Entrusted to that Lawyer - Colo. RPC 1.3]**

72. Paragraphs 65 through 71 are incorporated herein as if fully set forth.

73. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client, and that a lawyer shall not neglect a legal matter entrusted to that lawyer.

74. The respondent failed to act with reasonable diligence and promptness and neglected the client's legal matter by failing to advise his client of the August 9, 2001, hearing date.

The respondent was required to complete the specific task described above.

75. The respondent's lack of diligence and promptness, and/or neglect caused injury or potential injury to the client.

76. By such conduct, the respondent violated Colo. RPC 1.3.

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM IX**

**[A Lawyer Shall Keep A Client Reasonably Informed About the Status of a Matter, Promptly Comply With Reasonable Requests for Information - Colo. RPC 1.4(a)]**

77. Paragraphs 65 through 71 are incorporated herein as if fully set forth.

78. Colo. RPC 1.4(a) provides that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

79. This respondent failed to keep the client reasonably informed about the status of the legal matter by failing to advise the client of the August 9, 2001, hearing date and the possible legal effects of the client's failing to appear for such hearing.

80. The respondent's failing to communicate with the client caused injury or potential injury to the client.

81. By such conduct, the respondent violated Colo. RPC 1.4(a).

WHEREFORE, the people pray that the respondent be found to have engaged in misconduct under C.R.C.P. 251.5 and the Colorado Rules of Professional Conduct as specified above; the respondent be appropriately disciplined for such misconduct; the respondent be required to refund fees to the client, and/or the client protection fund pursuant to C.R.C.P. 252.14(b), and/or provide restitution to third parties; the respondent be required to return client files (or other client property); the respondent be required to take any other remedial action appropriate under the circumstances; and the respondent be assessed the costs of this proceeding.

Dated this 17<sup>th</sup> day of September, 2003.

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James C. Coyle, #14970  
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John S. Gleason, #15011  
Regulation Counsel  
Attorneys for Complainant