

People v. Sisneros. 08PDJ056 and 08PDJ058 (consolidated with 08PDJ089, 08PDJ115, and 08PDJ116). July 27, 2009. Attorney Regulation.

Following a Sanctions Hearing, the Presiding Officer, John E. Hayes, disbarred Guadalupe J. Sisneros (Attorney Registration No. 30663) from the practice of law, effective August 31, 2009. Respondent knowingly converted funds belonging to several clients and knowingly failed to perform services in their cases. He also failed to present mitigating evidence or otherwise participate in these proceedings and the facts admitted by default proved multiple violations of Colo. RPC 1.3, 1.4(a), 1.4(b), 1.5(b), 1.16(d), 3.4(c), 4.2, 5.5(a), 8.4(c), and 8.4(d). Accordingly, the Presiding Officer found no adequate basis to depart from the presumptive sanction of disbarment.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	
Complainant: THE PEOPLE OF THE STATE OF COLORADO, Respondent: GUADALUPE J. SISNEROS.	Case Number: 08PDJ056 and 08PDJ058 (consolidated with 08PDJ089, 08PDJ115, and 08PDJ116)
DECISION AND ORDER IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.19(c)	

On April 8, 2009, John E. Hayes, Esq., serving as the Presiding Officer pursuant to C.R.C.P. 251.18(b)(1), held a Sanctions Hearing pursuant to C.R.C.P. 251.18(d).¹ Kim E. Ikeler appeared on behalf of the Office of Attorney Regulation Counsel (“the People”). Guadalupe J. Sisneros (“Respondent”) did not appear, nor did counsel appear on his behalf. The Presiding Officer now issues the following “Decision and Order Imposing Sanctions Pursuant to C.R.C.P. 251.19(c).”

I. ISSUE

Disbarment is the presumptive sanction when a lawyer knowingly converts client funds or knowingly fails to perform services for a client and therefore causes serious or potentially serious injury. Respondent knowingly converted funds belonging to several clients and knowingly failed to perform services in their cases. He also failed to participate in these proceedings. Is disbarment the appropriate sanction in this case?

SANCTION IMPOSED: ATTORNEY DISBARRED

¹ The Presiding Disciplinary Judge issued an “Order Re: Disqualification Pursuant to C.R.C.P. 97” in 08PDJ056 and 08PDJ058 on July 2, 2008, in 08PDJ089 on September 15, 2008, in 08PDJ115 on December 12, 2008, and in 08PDJ116 on January 21, 2009. The Presiding Disciplinary Judge also transferred the proceedings in 08PDJ058 into 08PDJ056 on June 23, 2008.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

The People filed a complaint in 08PDJ056 and 08PDJ058 on June 5, 2008; in 08PDJ089 on September 13, 2008; in 08PDJ115 on December 12, 2008; and in 08PDJ116 on December 15, 2008. The Presiding Officer consolidated these cases into 08PDJ056 and 08PDJ058 on November 12, 2008 (08PDJ089) and January 21, 2009 (08PDJ115 and 08PDJ116). Respondent failed to file an answer in any of the cases and the Presiding Officer granted motions for default on September 16, 2008 (08PDJ056 and 08PDJ058); November 12, 2008 (08PDJ089); and February 17, 2009 (08PDJ115 and 08PDJ116). Upon the entry of default, the Presiding Officer deems all facts set forth in the complaints admitted and all rule violations established by clear and convincing evidence.²

The Presiding Officer hereby adopts and incorporates by reference the factual background of this case as fully detailed in the four separate complaints that have been filed in this case.³ Respondent took and subscribed the oath of admission and gained admission to the Bar of the Colorado Supreme Court on May 20, 1999. He is registered upon the official records of the Colorado Supreme Court, Attorney Registration No. 30663, and is therefore subject to the jurisdiction of the Presiding Officer.⁴

Case Number 08PDJ056 and 08PDJ058 – The Sandoval Matter

Gail Sandoval is the daughter of Gerald Sandoval. Ms. Sandoval was married to Mr. Medina, a cousin of Respondent. In March 2006, Ms. Sandoval recommended that her father hire Respondent to represent him in an employment matter. Mr. Sandoval paid Respondent a retainer of \$1,000.00 to undertake the representation. Subsequently, Mr. Sandoval had an extremely difficult time contacting Respondent, sometimes leaving as many as twenty messages per day on Respondent's voicemail.

Meanwhile, on December 2, 2006 Gail Sandoval filed a complaint against Mr. Medina that resulted in domestic violence charges being filed against Mr. Medina. Ms. Sandoval also commenced a dissolution of marriage action on December 4, 2006. Respondent represented Mr. Medina and another attorney represented Ms. Sandoval.

² See *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

³ See the People's complaints in 08PDJ056 and 08PDJ058, 08PDJ089, 08PDJ115, and 08PDJ116.

⁴ The Presiding Officer filed a "Report Re: Petition for Immediate Suspension Pursuant to C.R.C.P. 251.8(b)(2) on July 14, 2008." The Colorado Supreme Court thereafter immediately suspended Respondent from the practice of law on July 18, 2008.

Mr. Sandoval continued to experience difficulties in contacting Respondent. However, in May 2007, Respondent delivered a cashier's check for \$1,000.00 to Ms. Sandoval at her place of employment and asked her to forward the check to her father. Respondent also told Ms. Sandoval that if she dropped the domestic violence charges against Mr. Medina, "the divorce would go more smoothly." Ms. Sandoval became uncomfortable with this situation and told Respondent that counsel represented her and that Respondent should talk to her counsel, not to her. Although Respondent ultimately returned Mr. Sandoval's \$1,000.00 retainer to Mr. Sandoval, he failed to file any action relating to Mr. Sandoval's employment grievance. Any such action is now time-barred.

Respondent's conduct in the Sandoval matters caused both Ms. Sandoval and Mr. Sandoval actual harm and violated Colo. RPC 1.3, Colo. RPC 1.4(a), Colo. RPC 4.2, and Colo. RPC 8.4(d).

Case Number 08PDJ056 and 08PDJ058 – The Mayeux Matter

On June 30, 2007, Devin Mayeux was arrested for DWAI. On July 12, 2007, Mr. Mayeux met Respondent at a restaurant in Denver. During the meeting, Mr. Mayeux paid Respondent \$500.00 in the form of a check. Mr. Mayeux and Respondent met a second time on July 21, 2007, at which time Mr. Mayeux paid Respondent \$250.00 in cash. On July 27, 2007, Mr. Mayeux appeared in Arapahoe County Court to enter his plea of not guilty. Respondent failed to appear. On August 13, 2007, Mr. Mayeux left a voicemail informing Respondent of a court hearing date on August 16, 2007 and a motor vehicle department hearing on August 28, 2007. Respondent failed to appear at the court hearing date and appeared for a total of approximately forty-five minutes at the motor vehicle department hearing.

The county court rescheduled Mr. Mayeux's trial to September 26, 2007. Mr. Mayeux at least twice advised Respondent of the trial date by voicemail, the second time the day before the scheduled trial. Respondent failed to appear at the trial on September 26, 2007. Mr. Mayeux had to wait at the courthouse from 8 a.m. until 4 p.m. that day, at which time the judge advised Mr. Mayeux that no further trial dates would be scheduled. Mr. Mayeux then changed his plea to guilty. Mr. Mayeux was fined and sentenced to community service and alcohol evaluations. As a result of the sentence imposed, Mr. Mayeux testified that he lost his home, his truck, and his income since he is no longer able to drive. Mr. Mayeux also unsuccessfully attempted to contact Respondent numerous times seeking a refund of the fees paid.

Respondent's conduct caused Mr. Mayeux actual harm and violated Colo. RPC 1.3, Colo. RPC 1.4(a), Colo. RPC 1.5(b), Colo. RPC 1.16(d), Colo. RPC 8.4(c), and Colo. RPC 8.4(d).

Case Number 08PDJ056 and 08PDJ058 – The Cruz Matter

Leo Cruz hired Respondent on July 31, 2007 to represent him in an assault case. Mr. Cruz paid Respondent \$750.00 as a retainer on that date. On October 9, 2007, Mr. Cruz paid Respondent an additional \$250.00 to hire an investigator. On October 15, 2007, Mr. Cruz paid Respondent an additional \$250.00 plus \$40.00 to obtain a police report. Respondent thereafter requested numerous continuances of Mr. Cruz's court hearings. Because Respondent did not appear to be prepared to defend him, Mr. Cruz retained a new attorney, David Migneault.

Mr. Migneault attempted to contact Respondent to arrange a meeting to discuss the case before the next trial date, but Respondent never replied to his phone messages. Respondent eventually agreed to sign a substitution of counsel, but then failed to provide Mr. Cruz's case file to Mr. Migneault, saying instead that the file had been mailed. Respondent failed to prepare for Mr. Cruz's defense in any way. When Mr. Cruz requested a refund of his fees and costs paid to Respondent, Respondent failed to refund any of the monies.

Respondent's conduct caused Mr. Cruz actual harm and violated Colo. RPC 1.5(b), Colo. RPC 1.16(d), and Colo. RPC 8.4(c).

Case Number 08PDJ056 and 08PDJ058 – The Judge Vigna Matter

The Honorable Rosalie Vigna is a retired Pueblo County District Court Judge. On August 27, 2007, Respondent entered his appearance in Judge Vigna's court as attorney for Gregory Perez in a felony matter. Respondent told Judge Vigna that he intended to file a motion to suppress in the case. Accordingly, Judge Vigna set a hearing for February 14, 2008 and Respondent assured the judge that he would file the motion to suppress prior to the hearing date. On February 14, 2008, Mr. Perez, a deputy district attorney, and several Pueblo Police Department officers appeared in court, but Respondent did not appear. When Judge Vigna attempted to call Respondent, she found his voicemail full and not accepting new messages.

Judge Vigna thereafter vacated the hearing, found Respondent in contempt of court, and ordered him to pay \$180.00 to the City of Pueblo for overtime paid to the police officers appearing at the hearing. Judge Vigna then rescheduled the hearing for March 3, 2008. On that date, Respondent again failed to appear and Judge Vigna allowed Mr. Perez to retain new counsel. Respondent never paid the City of Pueblo the \$180.00 ordered by Judge Vigna.

Respondent's conduct in the Judge Vigna matter resulted in harm to the judicial system and to the City of Pueblo, and violated Colo. RPC 3.4(c) and Colo. RPC 8.4(d).

Case Number 08PDJ056 and 08PDJ058 – The ARC Matter

Respondent was representing a juvenile in a criminal mischief matter in Jefferson County before Magistrate K.J. Moore. Respondent failed to appear at a hearing on February 6, 2008 notwithstanding the fact he had been in the courtroom at the time the hearing had been scheduled. The juvenile and his mother appeared for the hearing. They requested and the magistrate granted them a continuance to April 9, 2008. On April 9, 2008 Respondent appeared in the courtroom, but the magistrate advised Respondent that he could not appear as an attorney because the Colorado Supreme Court had suspended him from the practice of law. Although Respondent disclaimed knowledge of his suspension, the magistrate had confirmed the suspension and Respondent's notification thereof with both the Colorado Supreme Court and the Office of Attorney Regulation Counsel. The Court continued the hearing to allow the juvenile to retain new counsel.

Respondent's conduct in the ARC matter resulted in harm to the juvenile represented by Respondent and the judicial system and violated Colo. RPC 1.3, Colo. RPC 1.16(a), Colo. RPC 3.4(c), Colo. RPC 5.5(a), and Colo. RPC 8.4(d).

Case Number 08PDJ089 – The Petropulos Matter

In November 2007, Anna Petropulos met Respondent at a restaurant to discuss a civil lawsuit she wished to file against her ex-boyfriend. Ms. Petropulos clearly expressed that she needed the matter to be commenced and resolved as soon as possible. Ms. Petropulos agreed to pay Respondent a \$500.00 fee and an additional \$180.00 to cover the costs of filing paperwork. Between November 2007 and January 2008, Ms. Petropulos communicated with Respondent about the case. On January 10, 2008, Respondent visited Ms. Petropulos' home to discuss the matter and was paid \$400.00 by Ms. Petropulos' current boyfriend. Ms. Petropulos immediately thereafter had difficulty contacting Respondent, leaving him voice, text, and e-mail messages to which Respondent failed to respond.

In February 2008, Respondent left a text message for Ms. Petropulos indicating that his secretary had filed paperwork with the court but no trial date had been set. Ms. Petropulos contacted a friend of hers who is an attorney. The attorney friend contacted the court only to discover that no case had been filed.

On March 26, 2008, a collection agency contacted Ms. Petropulos seeking \$6,000.00 for damages because she had co-signed for a lease and her ex-boyfriend had breached the lease. Ms. Petropulos contacted Respondent who said he would contact the collection agency. On March 27, 2008, Respondent visited Ms. Petropulos' home, received \$280.00 in cash, and assured Ms. Petropulos that he would contact the collection agency

immediately to resolve the matter. He never contacted the collection agency or its attorneys. Respondent also advised Ms. Petropulos that she could sue the collection agency for reimbursement of any amounts she had to pay. Ultimately, Ms. Petropulos felt compelled to pay approximately \$4,000.00 to the collection agency in order to preserve her credit rating. Respondent, notwithstanding his assurances, never commenced an action against either the ex-boyfriend or the collection agency.

Respondent's conduct caused Ms. Petropulos actual harm and violated Colo. RPC 1.3, Colo. RPC 1.4(a), and Colo. RPC 8.4(c).

Case Number 08PDJ089 – The Cuevas Matter

Respondent agreed to represent Luis Cuevas in a Costilla County District Court civil action. Although Respondent and Mr. Cuevas never entered into a written fee agreement, Mr. Cuevas paid Respondent approximately \$1,000.00 in cash and performed auto repair and service for Respondent at no charge.

On August 2, 2007, Respondent failed to appear for a status conference in the civil action. Counsel for the plaintiffs attempted to contact Respondent the same day without success and the court rescheduled the hearing. Respondent appeared in court on the rescheduled status conference date of August 23, 2007. However, Respondent failed to appear for a subsequent status conference held October 25, 2007. The plaintiffs contemporaneously filed a motion for summary judgment. Respondent failed to notify Mr. Cuevas of the filing of the motion and failed to reply to the motion.

During this time, Mr. Cuevas began to experience difficulties with contacting Respondent. When Mr. Cuevas finally reached Respondent, Respondent assured Mr. Cuevas that he had not received notice of any pending hearings. On January 11, 2008, the court entered summary judgment against Mr. Cuevas in the principal amount of \$50,350.00, costs of \$360.06, and attorney fees of \$4,421.25. On March 13, 2008, the court issued a Writ of Garnishment against Mr. Cuevas. Mr. Cuevas only learned about the garnishment when his bank contacted him after the bank had been served to garnish his account. Mr. Cuevas contacted Respondent to inquire as to the status of matters and Respondent assured Mr. Cuevas that he would "get to the bottom" of things and file an appeal to stop the garnishment. Respondent never took any action. Mr. Cuevas repeatedly asked Respondent to return his file, but Respondent also failed to return it.

Respondent's conduct caused Mr. Cuevas actual harm and violated Colo. RPC 1.3, Colo. RPC 1.4(a), Colo. RPC 1.4(b), 1.16(d), and Colo. RPC 8.4(c).

Case Number 08PDJ115 – The Hernandez Matter

Lawrence Hernandez retained Respondent to represent him in a civil action that began in 2003. Mr. Hernandez agreed to pay Respondent \$150.00 per hour for representation, and paid Respondent approximately \$14,000.00 over the course of several years. Problems began to arise in mid-2007, when Respondent stopped regularly and promptly communicating with Mr. Hernandez. When they communicated, Respondent told Mr. Hernandez that nothing new was happening in the civil action. Mr. Hernandez was not receiving copies of pleadings in the case.

In December 2007, Mr. Hernandez was served with a contempt citation to show cause for his failure and refusal to comply with orders of the court related to discovery. Respondent and Mr. Hernandez appeared at the show cause hearing on January 3, 2008. During the hearing, Mr. Hernandez learned for the first time that on September 11, 2007, he had been ordered to pay \$1,071.80 in attorney fees and costs resulting from his failure to provide discovery. In addition, the court ordered Mr. Hernandez to pay \$1,119.53 in attorney fees and costs for missing a hearing on November 5, 2007. Mr. Hernandez had never been notified of this hearing.

The court gave Mr. Hernandez until January 14, 2008 to produce the requested discovery. Mr. Hernandez unsuccessfully attempted to deal with Respondent in order to produce the records. When Mr. Hernandez finally reached Respondent, Respondent advised Mr. Hernandez that he had obtained a money order in the amount of \$1,119.53 to pay opposing counsel.

On January 31, 2008, Mr. Hernandez sent a letter terminating Respondent's services. Mr. Hernandez and his new counsel appeared at a hearing on February 4, 2008 and coincidentally encountered Respondent in the hallway of the courthouse. Respondent agreed to withdraw as Mr. Hernandez's attorney and to accompany new counsel to talk to the judge about the hearings he had missed. Respondent also indicated to new counsel that Respondent had paid opposing counsel \$1071.00. Respondent and Mr. Hernandez's new counsel appeared before the court clerk and Respondent agreed to provide his files to new counsel. However, Respondent never provided any files to counsel or returned his file to Mr. Hernandez. Mr. Hernandez's new counsel was eventually required to reconstruct a pleadings file by downloading on-line files and purchasing a second copy of a deposition, all at a significant cost to Mr. Hernandez. Mr. Hernandez ultimately concluded that he would be required to pay all of the sanctioned costs and fees, which totaled \$2,687.48. Mr. Hernandez requested a refund of the unearned portions of the fees he has paid Respondent, but Respondent never refunded any of the funds.

Respondent's conduct caused actual harm to Mr. Hernandez and violated Colo. RPC 1.3, Colo. RPC 1.16(d), and Colo. RPC 8.4(c).

Case Number 08PDJ116 – The Perez Matter

Gregory Perez retained Respondent to represent him in a DUI case in Pueblo County Court in July 2007. Between July 2007 and February 2008, Mr. Perez paid Respondent \$3,500.00. On four separate occasions, Respondent appeared in court for Mr. Perez and requested a continuance of the proceedings. On February 14, 2008, Respondent failed to appear for a motions hearing. Because Respondent filed no motion, the court found Respondent in contempt and ordered him to pay \$180.00 to cover the costs incurred by members of the Pueblo Police Department who had appeared to testify. The matter was continued to March 3, 2008, at which time Respondent again failed to appear.

Immediately thereafter, Mr. Perez attempted to contact Respondent in order to terminate his services. When Mr. Perez contacted Respondent, Respondent agreed to refund Mr. Perez \$3,000.00 of the fee paid to date (Mr. Perez agreed that Respondent did earn approximately \$500.00 of the total fee paid), but Mr. Perez has never heard from Respondent again and has received no refund from Respondent.

Respondent's conduct caused actual harm to Mr. Perez and violated Colo. RPC 1.3, Colo. RPC 1.16(d), and Colo. RPC 8.4(c).

In all, Respondent engaged in misconduct involving eleven distinct Rules of Professional Conduct⁵ in matters involving nine separate parties.⁶ Such a pattern of misconduct cannot go unheeded or unpunished.

III. SANCTIONS

The ABA Standards for Imposing Lawyer Sanctions (1991 & Supp. 1992) (“ABA *Standards*”) and Colorado Supreme Court case law are the guiding authorities for selecting and imposing sanctions for lawyer misconduct.⁷ In imposing a sanction after a finding of lawyer misconduct, the Presiding Officer must first consider the duty breached, the mental state of the lawyer, the injury or potential injury caused, and the aggravating and mitigating evidence pursuant to ABA *Standard* 3.0.

⁵ Colo. RPC 1.3, 1.4(a), 1.4(b), 1.5(b), 1.16(a)(1), 1.16(d), 3.4(c), 4.2, 5.5(a), 8.4(c) and 8.4(d).

⁶ The Sandovals, Mr. Mayeux, Mr. Cruz, Judge Vigna, ARC, Ms. Petropulos, Mr. Cuevas, Mr. Hernandez and Mr. Perez.

⁷ See *In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).

Respondent's failure to participate in these proceedings leaves the Presiding Officer with no alternative but to consider only the established facts and rule violations set forth in the complaints, and the statements of the complaining witnesses, in evaluating the first three factors listed above.⁸ The Presiding Officer finds Respondent violated duties owed to his clients, the public, the legal system, and other duties owed as a professional. Respondent specifically violated his duty to preserve the property of his clients, failed to act with reasonable diligence or adequately communicate while representing his clients, and failed to maintain his personal integrity. The entries of default established that Respondent *knowingly* engaged in this conduct and caused significant actual and potential harm to his clients.

The Presiding Officer finds several aggravating factors exist including dishonest or selfish motive, a pattern of misconduct, multiple offenses, substantial experience in the practice of law, and indifference to making restitution. *See ABA Standards* 9.22(b), (c), (d), (i), and (j). Due in part to the absence of any contradictory evidence, the Presiding Officer finds clear and convincing evidence to support each aggravating factor. Respondent presented no evidence in mitigation.

The *ABA Standards* suggest that the presumptive sanctions for the misconduct evidenced by the admitted facts and rule violations in this case range from suspension to disbarment. However, the most egregious conduct was Respondent's knowing conversion of multiple client funds. Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.⁹

In the absence of significant mitigating factors, Colorado Supreme Court case law applying the *ABA Standards* holds that disbarment is the presumptive sanction for conversion of client funds alone. Knowing conversion or misappropriation of client money "consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking."¹⁰ Neither the lawyer's motive in taking the money, nor the lawyer's intent regarding whether the deprivation is temporary or permanent, are relevant for disciplinary purposes.¹¹ Although significant mitigating factors may overcome the presumption of disbarment, none are presented in this case.¹²

⁸ The Sandovals, Mr. Mayeux, Mr. Cruz, Judge Vigna, Ms. Petropulos, and Mr. Perez each testified during the Sanctions Hearing on April 8, 2009.

⁹ *See ABA Standard* 4.11.

¹⁰ *People v. Varallo*, 913 P.2d 1, 11 (Colo. 1996).

¹¹ *Id.* at 10-11.

¹² *See In re Fischer*, 89 P.3d 817 (Colo. 2004) (finding significant facts in mitigation).

Respondent took retainers from his clients with the expectation that he would handle their cases. His failure to return those retainers upon the termination or abandonment of his representation is enough to warrant disbarment. This case presents classic examples of embezzlement and deceit. His additional misconduct in neglecting these clients reinforces the conclusion that disbarment is the appropriate sanction in this case. Finally, Respondent's complete failure to participate in these proceedings further precludes any deviation from the presumptive sanction.

IV. CONCLUSION

One of the primary goals of our disciplinary system is to protect the public from lawyers who pose a danger to them. The facts established in the complaint, without explanation or mitigation, reveal the serious danger Respondent poses to the public. He knowingly converted client funds and abandoned his clients and this misconduct adversely reflects on his fitness to practice law. Absent extraordinary factors in mitigation not presented here, the ABA *Standards* and Colorado Supreme Court case law applying the ABA *Standards* both support disbarment. Upon consideration of the nature of Respondent's misconduct, his mental state, the significant actual and potential harm caused, and the absence of mitigating factors, the Presiding Officer concludes there is no justification for a sanction short of disbarment.

V. ORDER

The Presiding Officer therefore **ORDERS**:

1. GUADALUPE J. SISNEROS, Attorney Registration No. 30663, is hereby **DISBARRED** from the practice of law and his name shall be stricken from the list of attorneys licensed to practice law in the State of Colorado. The disbarment **SHALL** become effective thirty-one (31) days from the date of this order in the absence of a stay pending appeal pursuant to C.R.C.P. 251.27(h).
2. GUADALUPE J. SISNEROS **SHALL** pay restitution to the Attorney's Fund for Client Protection, in an aggregate amount to be determined.
3. GUADALUPE J. SISNEROS **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 within which to respond.

