People v. Selvoy Peterson Fillerup. 22PDJ010, 22PDJ023. September 29, 2022.

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Selvoy Peterson Fillerup (attorney registration number 43282). The disbarment takes effect on November 3, 2022.

Fillerup represented a criminal defendant charged with second-degree murder. The client paid Fillerup over $10,000.00 based on the retainer agreement, which neither stated an hourly rate nor set forth benchmarks or other indicators for how Fillerup would earn the fee. Fillerup did not deposit any of the client's funds into a trust account. After Fillerup successfully moved to withdraw from the representation while the case was pending, his former client requested a partial refund and the case file. Fillerup did not respond, return the file, or provide any refund.

In a separate matter, Fillerup contracted with the Office of Respondent Parents' Counsel ("ORPC") to represent indigent parents in child welfare proceedings. In several cases, Fillerup failed to appear for hearings and twice failed to sign agreements necessary for his clients' admission into the family recovery court program. When ORPC attempted to contact Fillerup about his failures to appear, Fillerup did not respond, leading ORPC to reassign Fillerup's cases to other lawyers and to terminate his contract.

In a third matter, Fillerup, who represented a domestic relations client, failed to attend several appearances. Because Fillerup also failed to notify his client about the appearances, his client also did not attend. The court eventually held a default hearing in October 2021. Neither Fillerup nor his client appeared at the default hearing, and the court issued permanent orders based on the opposing party's proposed parenting plan and proposed separation agreement. Fillerup failed to meaningfully respond to his client's pleas for information about the case. The next month, child support enforcement authorities activated an income assignment against Fillerup's client. The client later retained new counsel, who requested that Fillerup provide the case file. Fillerup never responded to the lawyer's request.

Fillerup's conduct violated Colo. RPC 1.3 (a lawyer must act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a)(3) (a lawyer must keep a client reasonably informed about the status of the matter); Colo. RPC 1.5(h) (a lawyer must include specific benchmarks for earning a portion of a flat fee, if any portion is to be earned before conclusion of the representation); Colo. RPC 1.15A(a) (a lawyer must hold client property separate from the lawyer's own property); Colo. RPC 1.16(d) (a lawyer must protect a client's interests upon termination of the representation, including by giving reasonable notice to the client and returning unearned fees and any papers and property to which the client is entitled); and Colo. RPC 8.4(d) (it is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice).

The case file is public per C.R.C.P. 242.41(a). 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:** SELVOY PETERSON FILLERUP, #43282	Case Number: **22PDJ010** **(consolidated with 22PDJ023)**
OPINION IMPOSING SANCTIONS UNDER C.R.C.P. 242.31(b)	

Selvoy Peterson Fillerup ("Respondent") knowingly failed to establish benchmarks in a flat fee agreement, did not maintain unearned client funds in trust, failed to communicate with a client, neglected multiple client matters, declined to return client files or provide a refund on termination of a client matter, and engaged in conduct that prejudiced the administration of justice. Through this misconduct, he caused serious and potentially serious client harm. Given the many affected clients, the severity of the harm, and the predominance of aggravating factors, the appropriate sanction in this matter is disbarment.

I. PROCEDURAL HISTORY

On February 23, 2022, Alan C. Obye of the Office of Attorney Regulation Counsel ("the People") filed a complaint with the Presiding Disciplinary Judge ("the Court") in case number 22PDJ010. Respondent did not answer or otherwise evince an intention to participate in the proceeding. On April 20, 2022, the People moved for entry of default. Respondent did not respond, and the Court granted the People's default motion on May 13, 2022, deeming all allegations and claims in the complaint admitted.[1]

On May 10, 2022, the People filed a complaint in case number 22PDJ023; Respondent never answered. The Court consolidated case numbers 22PDJ010 and 22PDJ023 on June 14, 2022. The People moved for default in case number 22PDJ023 on July 1, 2022, and the Court entered default on July 27, 2022. On the entry of default in case number 22PDJ023, the Court deemed all allegations and claims admitted.[2] In the same order, the Court notified Respondent that he has the right to attend the sanctions hearing, to be represented by counsel at his own expense, to cross-examine witnesses, and to present argument and evidence about the appropriate sanction.

[1] C.R.C.P. 242.27(a).
[2] C.R.C.P. 242.27(a).

On September 15, 2022, the Court held a sanctions hearing under C.R.C.P. 242.27(b) and 242.30. Gregory G. Sapakoff represented the People; Respondent did not appear.[3] During the hearing, the Court admitted the People's exhibits 1-2 into evidence and heard testimony from Melissa Michaelis Thompson and Leonard Ray Higdon.[4]

II. ESTABLISHED FACTS AND RULE VIOLATIONS

The Court adopts and incorporates by reference the facts of these consolidated cases, as fully detailed in the admitted complaints. Respondent was admitted to the practice of law in Colorado on May 24, 2011, under attorney registration number 43282.[5] He is thus subject to the jurisdiction of the Colorado Supreme Court and the Court in this disciplinary proceeding.

Mathews matter

Scott Mathews was charged in Arapahoe County District Court with second-degree felony murder on July 10, 2019. Mathews first consulted with Respondent about the charges in July 2019. On July 24, 2019, Respondent filed an entry of appearance, a motion to produce specific evidence, a motion to preserve and produce, and a notice of revocation of all releases and assertion of all rights and privileges, along with proposed orders.

Mathews signed Respondent's retainer agreement on August 9, 2019. The retainer agreement described the scope of representation:

> Client has retained Attorney to represent Client surrounding a 2nd degree murder charge where Client is being prosecuted in criminal court. Attorney agrees to assist with any and all transactions, contract negotiations, litigation etc. that result in the resolution of this matter. This agreement does not cover any services you may request in connection with any other matter, action or proceeding.[6]

The retainer agreement provided that Respondent would represent Mathews in all aspects of the criminal case. The fee agreement provided in part:

> As agreed, our fee for these services is based on the sum of $10,000. In the event this matter goes to trial, an additional $15,000 will be added. Upon acceptance of the contract $2,000 will be collected. Monthly payments of $500 will be paid

[3] At the sanctions hearing, the People stated that they tried to contact Respondent most recently on September 7 and 13, 2022, leaving voice messages at Respondent's registered cell phone number confirming the date, time, and location of the sanctions hearing. The People also emailed Respondent at his registered email address on those dates, they said, but their emails bounced back as undeliverable to the email address.

[4] On September 7, 2022, the Court granted the People's motion to elicit telephone testimony from Higdon, after Respondent failed to timely respond to the motion.

[5] *See also* Ex. 1.

[6] Compl. ¶ 8 (case number 22PDJ010).

> towards the remaining balance. The usual expenses and costs incurred during the course of litigation may be filing fees, photocopy, long distance telephone, fax, transcripts, postage, overnight delivery, messengers, computer legal research and other related expenses.
>
> …
>
> TERMINATION OF THE RELATIONSHIP
>
> Our representation of you will continue through the conclusion of this matter or until otherwise agreed in writing. In the event fees earned under this agreement are not remitted in a time[ly] fashion, Crestone Law Group, LLC reserves the right to withdraw from this representation, subject, of course, to the requirements of the Code of Professional Responsibility and the rules of the tribunal in question.[7]

Mathews's retainer was intended to be a flat fee, as Respondent did not bill his time on an hourly basis. But the retainer agreement did not contain an hourly rate, benchmarks for completion of tasks upon which some or all of the fee would be earned, or any other indicator of how Respondent would earn the fee.

Mathews paid Respondent $2,000.00 on August 10, 2019. In addition to this initial payment, Mathews made sixteen other payments via Venmo. Mathews ultimately paid Respondent $10,650.00, more than the agreed-upon pretrial retainer. Respondent did not deposit any of Mathews's funds into a trust account.

Respondent provided the People several documents evidencing work he did on the case. These include draft motions, some of which were filed, a draft report from an expert in self-defense whom Respondent retained, and a draft of a civil complaint that Mathews contemplated filing against the victim. Respondent says he paid an investigator $1,000.00 from the money that Mathews paid him.

On February 23, 2021, Respondent texted Mathews, "I'm shutting down my practice. I am taking a job at the district attorney's office in Alamosa. We need to talk about getting you a public defender."[8] Respondent and Mathews talked by phone that same day. Respondent reiterated in the phone call that he would be withdrawing from the case.

On March 9, 2021, Mathews texted Respondent, in part:

> We've technically paid you more then [sic] $10,000 of the retainer required if we didn't go to trial which we technically haven't yet. Since you want to drop my case at this time, I am requesting that you refund me a minimum of $5,000 of the

[7] Compl. ¶ 9 (case number 22PDJ010).
[8] Compl. ¶ 18 (case number 22PDJ010).

> roughly $12,000 I have paid you to date and provide all evidence, testimonials, and any information you have gathered related to this case so my next lawyer can get a jump on the situation.[9]

At a pretrial conference on March 10, 2021, Respondent moved for and was granted leave to withdraw. After that conference, Respondent did not respond to Mathews's attempts to contact him, including Mathews's requests for a partial refund and the return of his file. Before complaining to the People, Mathews tried to call Respondent six times during March 2021. Mathews also texted Respondent periodically during this time, but Respondent put him off and blamed telephone troubles. Mathews was unable to set a telephone call with Respondent.

Mathews hired new counsel, who entered an appearance on May 12, 2021. Respondent never returned Mathews's file, despite Mathews's express request for its return. Nor did Respondent refund to Mathews any money.

Melissa Thompson/ORPC matter

Melissa Thompson is the Executive Director of the Office of Respondent Parents' Counsel ("ORPC"). ORPC is the agency responsible for advocating for indigent parents in child welfare proceedings. Respondent was a contractor with ORPC from about June 4, 2020, until Thompson terminated his contract on March 31, 2021.

Respondent represented respondent parent J.M. in a matter in Bent County. But on March 16, 2021, Respondent failed to appear for a family recovery court appearance on J.M.'s behalf. J.M. appeared without Respondent.

In another child welfare proceeding in Otero County, Respondent represented respondent parent V.V. On March 2, 2021, Respondent failed to appear for an adjudicatory dispositional hearing on V.V.'s behalf. The matter was reset for March 16, 2021, but Respondent failed to appear for the reset hearing. The matter was again reset.

In addition to missing court appearances, Respondent failed on two occasions to sign agreements that were needed to admit his clients into the family recovery court program, even though the clients did sign the agreements.

On March 16, 2021, C.J. Montoya, the Court Executive for Colorado's 16th Judicial District, emailed Thompson to report that Chief Judge Mark A. MacDonnell had told him that Respondent had "been failing to properly represent his clients in the 16th Judicial District."[10] Specifically, Chief Judge MacDonnell reported that Respondent failed to appear for respondents participating in family court on the two occasions described above.

[9] Compl. ¶ 19 (case number 22PDJ010).
[10] Compl. ¶ 34 (case number 22PDJ010).

The same day, ORPC's office manager, Jena Fleiner, acted on Montoya's report by emailing Respondent, "I am writing to set up a Zoom meeting with Melissa Thompson and Shawna Geiger in our office. Are you available at 2:30pm on Monday, March 22nd?"[11] Respondent did not respond to Fleiner's email.

On March 17, 2021, Fleiner emailed Respondent's paralegal, who also did not respond. On March 18, 2021, Thompson emailed Respondent, "We have been trying to reach you. We received a complaint about your performance, and because of your lack of response to our agency and missed court dates we are removing you from all your cases and terminating your ORPC contract. Please contact us."[12] Respondent did not respond to this email. Thus, on March 22, 2021, Thompson notified the chief judges in the districts where Respondent had been appointed that he was being removed from his cases and that ORPC was in the process of finding substitute counsel.

Respondent represented L.W., a respondent parent, in a Baca County case. On March 22, 2021, Respondent failed to appear for a pretrial conference on L.W.'s behalf. Judge Mike Davidson reported Respondent's failure to appear the case to Thompson. Judge Dawn Mann reported to Thompson, however, that Respondent had appeared in her courtroom at two hearings on March 25, 2021, and that he was unaware of his removal from ORPC matters. Even after Judge Mann alerted Respondent to his removal from ORPC matters, Respondent did not contact ORPC.

By March 30, 2021, ORPC had reassigned all of Respondent's cases to other lawyers. ORPC sent Respondent a certified letter on March 31, 2021, informing him that ORPC had terminated his contract and requesting that he submit any outstanding billing and transfer client files to new counsel by April 15, 2021. The letter stated that "[t]he ORPC has terminated your contract for failure to appear in court, for not billing our office since August 2020, and for being non-responsive to the ORPC's multiple requests for meetings."[13] Respondent did not respond to the letter.

ORPC investigated Respondent's billing and found that Respondent was appointed to nine cases but never submitted billing for four of them. In three of those four cases, Respondent entered billing but did not submit it for payment in the online system.

J.S. Matter

Beginning around October 2, 2020, Respondent represented J.S. in a dissolution matter. J.S.'s wife had filed a petition for dissolution on September 12, 2020. The matter involved relatively few financial issues and primarily concerned allocation of parental responsibilities for the parties' minor children.

[11] Compl. ¶ 35 (case number 22PDJ010).
[12] Compl. ¶ 38 (case number 22PDJ010).
[13] Compl. ¶ 47 (case number 22PDJ010).

On October 9, 2020, Respondent provided J.S. a fee agreement setting forth a broad scope of representation: "Attorney will represent Client in his divorce action 2020DR31445 in Arapahoe County."[14] On the same day, Respondent entered his appearance and filed a response to the petition for dissolution. Respondent requested, and J.S. paid by Venmo, a $200.00 retainer on October 13, 2020. This was the only fee J.S. ever paid Respondent.

Respondent failed to appear for a telephonic initial status conference on October 23, 2020. He did not inform J.S. of the status conference date, so J.S. did not appear, either. The court reset the matter for November 13, 2020, at which time Respondent appeared with J.S. On January 20, 2021, J.S. texted Respondent about the status of the case: "Hey boss any word on our divorce being finalized is there any update on that I guess we're good to go 50/50 then now if you heard anything else."[15] Respondent responded: "Not yet. I'll get a draft to her."[16]

Hearing nothing further from Respondent, J.S. texted him on June 7, 2021, writing, "just wanted to check in and ask if you know if my divorce is final I think the only thing left is my child class online."[17] Respondent responded, "I'll check. Hurry and do the class so that I can send in the certificate of completion."[18] On July 15, 2021, J.S. reached out to Respondent again. Three days later, Respondent replied, "Great. I'll send you the paperwork this morning."[19] But J.S. never received any paperwork from Respondent.

On August 20, 2021, the court issued a notice of hearing, setting a status conference for September 8, 2021, at 5:00 p.m. via Webex. The notice was served on Respondent electronically. But Respondent failed to appear for the status conference. Further, Respondent did not inform J.S. of the status conference, so J.S. failed to appear as well.

At that status conference, the judge expressed frustration at Respondent's repeated failures to appear. The judge requested that Respondent's opposing counsel draft permanent orders, a child support worksheet, a maintenance advisement form, and a support order, concluding, "let's get this case resolved."[20] When J.S.'s wife asked for clarification, the court replied, "that means that I've had enough of [Respondent] and [J.S.] not appearing for court and I'm asking your attorney to file some documents for the court to review that will be final orders of the court."[21]

On September 16, 2021, Respondent's opposing counsel filed a separation agreement and proposed orders without Respondent's input. The court issued an order the same day, noting that it could not enter permanent orders without J.S.'s signature on the separation

[14] Compl. ¶ 8 (case number 22PDJ023).
[15] Compl. ¶ 18 (case number 22PDJ023).
[16] Compl. ¶ 18 (case number 22PDJ023).
[17] Compl. ¶ 19 (case number 22PDJ023).
[18] Compl. ¶ 19 (case number 22PDJ023).
[19] Compl. ¶ 21 (case number 22PDJ023).
[20] Compl. ¶ 27 (case number 22PDJ023).
[21] Compl. ¶ 27 (case number 22PDJ023).

agreement. Then, on October 4, 2021, the court ordered the scheduling of a default hearing. The order stated in part:

> The Court has reviewed the Separation Agreement and finds that it is written in a way that shows there is an agreement between the parties, yet it is not signed by [J.S.] or his counsel. Therefore, if it is only the position of Petitioner, it shall be written in a way that reflects same.
>
> The Court is extremely concerned that neither [J.S.] nor his counsel have not appeared for several hearings. Therefore, once the Separation Agreement is written in a way that reflects no agreement between the parties, the Court will review at a default hearing. Counsel is hereby ordered to contact the Div. 35 clerk within 7 days . . . .[22]

Respondent's opposing counsel filed the required documents, and a permanent orders hearing was scheduled for October 12, 2021.

Respondent did not appear for the hearing on October 12, 2021. He did not inform J.S. of the hearing, so J.S. did not appear, either. At that hearing, the court commented at length on Respondent's and J.S.'s failures to appear, took some limited testimony from J.S.'s former spouse, and adopted opposing counsel's positions on division of property, child support, maintenance, and parenting time, which the court found fair and not unconscionable. J.S. remained unaware of the hearing or the court's orders.

After the hearing on October 12, 2021, the court issued permanent orders and orders as to the proposed parenting plan and proposed separation agreement. In the days after the hearing, J.S. learned from his former spouse that the orders had entered. On October 22, 2021, J.S. texted Respondent, asking him to call when he was able. Respondent did not reply.

A few days later, J.S. again texted Respondent, "Hello sir I need to talk to you immediately please call me."[23] Respondent replied, "I'll try to call this evening."[24] J.S. then asked, "We're [sic] you aware of a court date or . . . apparently I have to pay over 1600 in child and spouse support. Can I ask what's going on man."[25] Receiving no response, J.S. texted Respondent the next day, "So am I supposed to give up on this case you didn't call me back last night so what's up."[26] Respondent responded, "No. Sorry. I was up until midnight dealing with something. I'm trying to get it figured out."[27] J.S. replied, "Yeah something happened with the case we were supposed to have a court date October 12 so as far as the judge saw it we didn't

[22] Compl. ¶ 30 (case number 22PDJ023).
[23] Compl. ¶ 39 (case number 22PDJ023).
[24] Compl. ¶ 39 (case number 22PDJ023).
[25] Compl. ¶ 40 (case number 22PDJ023).
[26] Compl. ¶ 41 (case number 22PDJ023).
[27] Compl. ¶ 42 (case number 22PDJ023).

show up."[28] Respondent texted, "I didn't see the notice. I think I can fix it. I'm in South Dakota right now but I'm heading back today. I'll figure out what's going on."[29] J.S. replied:

> Yeah supposedly I owe her $1700 a month 1335 in spousal support and then 300 in child support the child support I seriously don't mind but I am not paying her 1335 that's unbelievable and she said to me before I found this out all the time I was never going to have to pay her[30]

But Respondent did not provide J.S. copies of the court's orders dated October 12, 2021. The Child Support Enforcement Unit contacted J.S. around November 24, 2021, and activated an income assignment.

On November 30, 2021, lawyer Leonard Higdon entered his appearance for J.S. after Respondent failed to file a notice of withdrawal or sign a substitution of counsel. Higdon sent a letter to Respondent by mail and email on December 2, 2021, stating, "Our office has been retained by your prior client, [J.S.], to represent him in an appeal of the Permanent Orders. As such, we are requesting a complete copy of your client on a forthwith basis, including all correspondence between your office and the court, opposing counsel and [J.S]."[31] Respondent did not respond to Higdon's request for J.S.'s file. Higdon's inability to retrieve the file from Respondent impeded Higdon's ability to understand the case history and to fully advise J.S. regarding remedial measures.

On February 23, 2022, Higdon filed a verified motion to set aside permanent orders under C.R.C.P. 55; alternatively, he moved for relief from permanent orders under C.R.C.P. 60, based in part on Respondent's conduct. The court granted Higdon's motion on April 11, 2022.

Through his misconduct in these three matters, Respondent violated six Colorado Rules of Professional Conduct:

- Respondent violated Colo. RPC 1.3, which requires a lawyer to act with reasonable diligence, by failing to appear in court in ORPC matters on multiple occasions and by failing to respond to ORPC's many attempts to contact him regarding his client matters. Respondent also violated this rule in the J.S. matter by failing to appear on J.S.'s behalf at several court appearances, including a permanent orders hearing, resulting in the court's adoption by default of opposing counsel's positions.

- In the J.S. matter, Respondent violated Colo. RPC 1.4(a)(3), which requires a lawyer to keep the client reasonably informed about the status of a matter, by failing to inform J.S. of multiple court appearances and the court's entry of permanent orders.

[28] Compl. ¶ 43 (case number 22PDJ023).
[29] Compl. ¶ 44 (case number 22PDJ023).
[30] Compl. ¶ 45 (case number 22PDJ023).
[31] Compl. ¶ 50 (case number 22PDJ023).

- Respondent violated Colo RPC 1.5(h), which requires a lawyer to memorialize a flat fee in a writing containing, among other things, a description of the services the lawyer agrees to perform; the amount to be paid to the lawyer and the timing of payment for the services to be performed; the amount to be earned on the completion of specified tasks or the occurrence of specified events, if any portion of the flat fee is to be earned by the lawyer before conclusion of the representation; and the amount or method of calculating the fees the lawyer earns, if any, should the representation terminate before the completion of the specified tasks or the occurrence of specified events. Respondent violated this rule in the Mathews matter by failing to include these required terms in his fee agreement, resulting in confusion about when and how much of the retainer was earned, if any.

- Respondent violated Colo. RPC 1.15A(a), which requires a lawyer to hold client property in the lawyer's possession separate from the lawyer's own property; it also requires a lawyer to keep funds in a trust account maintained in compliance with Colo. RPC 1.15B. Respondent violated this rule in the Mathews matter by failing to maintain Mathews's retainer in trust, even though Respondent's retainer agreement contained no explanation about when or how the flat fee would be earned. Because the retainer agreement did not contain any benchmarks establishing when Respondent would earn portions of the retainer, the entire retainer should have remained in Respondent's trust account until he completed the representation.

- Respondent violated Colo. RPC 1.16(d), which provides that on termination of the representation, a lawyer must take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing the client time to retain other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that the lawyer did not earn or incur. Respondent violated this rule in the Mathews matter by failing to respond to the client's request for return of the file and for a partial refund, even though, under the terms of the fee agreement, Respondent did not perform work sufficient to earn the entire retainer. Respondent also violated this rule in the J.S. matter by failing to respond to Higdon's request for J.S.'s client file.

- Respondent violated Colo. RPC 8.4(d), which provides that it is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice. Respondent violated this rule in the ORPC matter by failing to appear in court on many occasions and failing to respond to ORPC's attempts to contact him, resulting in his removal from all his contracted cases and requiring ORPC and the courts to quickly appoint substitute counsel.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[32] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[33] When deciding on a sanction after finding of lawyer misconduct, the Court must consider the duty the lawyer violated, the lawyer's mental state, and the actual or potential injury the lawyer's misconduct caused. These three variables yield a presumptive sanction that the Court may then adjust based on aggravating and mitigating factors.

ABA *Standard* 3.0 – Duty, Mental State, and Injury

Duty: Respondent violated duties to his clients of loyalty and diligence—duties that are the very beating heart of the lawyer-client relationship. He also violated his duty as a professional to promote the judicial process by facilitating the court system's efficient handling of cases.

Mental State: In recognition of the substantial period of time that Respondent engaged in a sustained pattern of client neglect, the Court finds that Respondent acted knowingly, at a minimum, in all three matters. Respondent's continued pattern of misconduct during most of 2021 equates to a more culpable state of mind.[34]

Injury: In the Mathews matter, Respondent caused Mathews at least potentially serious injury by abandoning Mathews in the midst of a serious felony case, forcing Mathews to retain new counsel. Respondent also failed to safeguard Mathews's funds and did not respond to Mathews's requests for a refund and for his file. Further, because Respondent's flat-fee agreement did not specify benchmarks for earning various portions of the retainer, the People are not able to quantify how much money Respondent earned and how much money Respondent should have returned to Mathews.

In the ORPC matter, Respondent caused his clients serious potential injury by abandoning their matters. As Thompson explained at the hearing, Respondent was appointed to represent clients in consequential cases implicating parents' rights to be involved in the lives of their children. When he walked away from his obligations to those clients, his absence imperiled their matters. For instance, in L.W.'s matter, Respondent's failure to appear for court delayed L.W.'s adjudication for more than two months. This delay, said Thompson, deprived L.W. of the full amount of time L.W. should have had to comply with a statutorily mandated treatment plan. In J.M.'s matter, Respondent's failure to sign the requisite paperwork caused delay, including delay in J.M.'s entry into family treatment court. Respondent's failure to appear in J.M.'s matter also resulted in a default adjudication against J.M.—an outcome to which J.M. objected and

[32] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).
[33] *See In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).
[34] *See People v. Silvola*, 915 P.2d 1281, 1284 (Colo. 1996) (finding that a lawyer acted willfully after the lawyer engaged in misconduct over a nineteen-month period) (citations omitted).

which, Thompson noted, may have been different had Respondent represented J.M. with diligence.

But for the prompt action ORPC took to reassign the clients' cases to other lawyers—an effort that required ORPC time and resources—Respondent's misconduct could have had even more deleterious effects. To reassign Respondent's cases, ORPC diverted staff resources to perform a proper accounting and to find suitable substitute counsel in those cases. Respondent's misconduct also wasted limited ORPC funds. Because Respondent never provided his files to substitute counsel, his clients' new lawyers were forced to start from scratch. They had to expend time recreating Respondent's work, billing ORPC for those otherwise unnecessary tasks.

Finally, according to Thompson, Respondent's lassitude in the ORPC matters undermined ORPC's reputation among its clientele and caused Respondent's clients to distrust substitute counsel. As Thompson explained, ORPC clients are often wary of appointed counsel to begin with; when Respondent abandoned his clients' matters, substitute counsel faced an even greater uphill battle in establishing a functional working relationship with the clients.

As for the J.S. matter, the Court finds that Respondent caused J.S. serious legal and financial injury by failing to appear at J.S.'s permanent orders hearing. Higdon, J.S.'s replacement counsel, testified that Respondent, by failing to appear, deprived J.S. of his opportunity to present evidence about the appropriate measure of maintenance and child support, resulting in permanent orders that were unduly burdensome to J.S. and, according to Higdon, erroneous. As an example, Higdon explained, the court failed to impute any income to J.S.'s former spouse because neither J.S. nor Respondent attended the hearing to present evidence relevant to that issue. J.S. sustained actual harm when the income assignment was activated, Higdon opined, because J.S. is unlikely ever to recoup that money. Further, the court awarded to J.S.'s former spouse sole decisionmaking authority, a decision that Higdon characterized as a deprivation of a fundamental parental right.

J.S. retained Higdon to set aside the permanent orders and remove the income assignment from his wages. Though Higdon was ultimately successful, this process took time and money that J.S., who is of limited means, did not readily have. The matter is still before the domestic relations court. J.S., his former spouse, and their two young children have been prejudiced by the inconvenience, expense, delay, and uncertainty entailed in unwinding the permanent orders, which could have been avoided if Respondent had attended to J.S.'s matter when it was originally initiated.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

ABA *Standard* 4.41 provides that disbarment is generally appropriate when a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client. ABA *Standard* 4.12 calls for suspension when a lawyer knows or should

know that the lawyer is dealing improperly with client property and causes injury or potential injury to a client.

Because the ABA Standards recommend that in cases involving multiple types of lawyer misconduct, the ultimate sanction should be at least consistent with, and generally greater than, the sanction for the most serious disciplinary violation, the Court finds that the presumptive sanction for Respondent's misconduct is disbarment.[35]

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating factors include any considerations that justify an increase in the degree of the sanction to be imposed, while mitigating factors warrant a reduction in the severity of the sanction.[36] The People advance for the Court's consideration five aggravating factors, all of which the Court finds present here: Respondent's prior discipline,[37] pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of his conduct, and substantial experience in the practice of law.[38] The Court is unaware of any applicable mitigating factors.

Analysis Under ABA *Standards* and Case Law

The Court heeds the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[39] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[40] Though prior cases can inform through analogy, the Court is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.[41]

Like the ABA *Standards*, Colorado Supreme Court case law supports disbarment here. Respondent engaged in grave misconduct, including neglecting many client cases, leading to serious or potentially serious client injury. Lawyers who engaged in similar misconduct have been disbarred.[42] Moreover, Respondent also technically converted client funds by failing to

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[35] ABA *Annotated Standards* Preface at xx.

[36] *See* ABA *Standards* 9.21 and 9.31.

[37] *See* Ex. 2. The Court considers case number 19PDJ054 as a prior disciplinary offense. In that case, Respondent was publicly censured for delaying the return of a client's original documents for eight months after the representation ended; failing to return wedding photographs to another client; and declining to respond to the People's many attempts to contact him during their investigation. The Court does not consider case number 21PDJ033 as a prior disciplinary offense because the sanction in that case postdated the bulk of the misconduct addressed in this case. *See People v. Williams*, 845 P.2d 1150, 1153 n.3 (Colo. 1993).

[38] ABA *Standards* 9.22(a), (c), (d), (g) and (i).

[39] *See In re Attorney F.*, 2012 CO 57, ¶ 20; *see also 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).

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

[41] *Id.* ¶ 15.

[42] *See People v. Townshend*, 933 P.2d 1327, 1329 (Colo. 1997) (disbarring a lawyer with prior discipline for abandoning two client matters and failing to account for or refund unearned fees); *Williams*, 845 P.2d at 1152-53

keep Mathews's funds in trust, which typically warrants a period of suspension.[43] When a lawyer abandons a client after failing to properly preserve the client's funds, disbarment is all the more justified.[44] Given the totality of the circumstances, including Respondent's pattern of neglect, the serious and potentially serious injury resulting from that misconduct, the surfeit of aggravators, and the absence of mitigators, the Court concludes that Respondent should be disbarred.

The Court also finds that restitution in the Mathews representation is warranted. At the sanctions hearing, the People demurred when asked whether they seek restitution; they reasoned that they could not quantify how much of the flat fee Respondent had earned because his flat-fee agreement did not contain benchmarks, he did not complete the representation, and he never turned over his file to subsequent counsel or disciplinary authorities. Notwithstanding the People's stance on this issue, the Court concludes that awarding restitution to Mathews is not only legally sound but just.

Under Colo. RPC 1.5(h)(1)(iii), "if any portion of the flat fee is to be earned by the lawyer before conclusion of the representation," a writing memorializing a flat-fee agreement must specify "the amount to be earned upon the completion of specified tasks or the occurrence of specified events." A flat-fee agreement must also provide for the "amount or the method of calculating the fees the lawyer earns, if any, should the representation terminate before completion of the specified tasks or the occurrence of specified events."[45]

Here, the admitted facts establish that Respondent's flat-fee agreement contained no benchmarks denoting the specific tasks or events upon which Respondent would earn portions of the flat fee. Nor did it set forth the amount or the method of calculating any fees Respondent would earn if the representation terminated before Respondent completed certain tasks. As such, the Court reads the flat-fee agreement as providing that Respondent was to earn no portion of the flat fee before the representation concluded. The admitted facts also establish that Respondent's representation of Mathews was to continue "through the conclusion of [Mathews's] matter or until otherwise agreed in writing."[46] But Respondent did not take the case up to trial or otherwise complete the representation, as contemplated by the flat-fee agreement. To the contrary, when Respondent remarked to Mathews that they needed to talk about finding a public defender, Respondent signaled that additional work on the case remained to be done. Further, the record in this case contains no evidence of a written agreement concluding Respondent's representation of Mathews. Under the terms of Respondent's flat-fee agreement, then, he did not earn any portion of the flat fee, as he withdrew before the representation concluded.

(disbarring a lawyer who abandoned a client's case and failed to account for or return a $500.00 retainer); *People v. Southern*, 832 P.2d 946, 947-48 (Colo. 1992) (disbarring a lawyer who had prior discipline for neglect and for abandoning several client matters).

[43] *See People v. Varallo*, 913 P.2d 1, 11 (Colo. 1996).

[44] *See People v. Jamrozek*, 914 P.2d 350, 354 (Colo. 1996) (disbarring a lawyer who accepted fees from several clients and then abandoned them, causing the clients substantial harm).

[45] Colo. RPC 1.5(h)(1)(iv).

[46] Compl. ¶ 9 (case number 22PDJ010).

This interpretation of Colo. RPC 1.5(h)(1)(iii) leads to a more just result than the People's position on restitution. The People cannot quantify the amount Respondent earned in the Mathews representation due to Respondent's own failings: he did not comply with the flat-fee agreement rule, nor did he honor his duty to return his client's file on termination of the representation. It is therefore Respondent, not Mathews, who should shoulder the financial repercussions associated with the People's inability to quantify the value associated with the work he performed. The Court concludes that under the flat-fee agreement, Respondent owes $10,000.00 to Mathews in restitution.

IV. CONCLUSION

The duty of diligence is the most basic of lawyers' client-centered duties. Without a lawyer's adequate attention to a client's matter, the lawyer-client relationship is rendered hollow and can ultimately prove counterproductive, resulting in serious client harm. Here, Respondent abandoned several clients, at least one of whom was left in a substantially worse position than if Respondent had never undertaken his matter. Moreover, Respondent accepted a flat fee without complying with the flat-fee rule; failed to maintain client funds in trust; and withdrew from a case without completing all the contemplated work, protecting his client's interests, or returning his client's file. Respondent's misconduct warrants disbarment.

V. ORDER

The Court **ORDERS:**

1. **SELVOY PETERSON FILLERUP**, attorney registration number **43282**, is **DISBARRED** from the practice of law in Colorado. The disbarment will take effect upon issuance of an "Order and Notice of Disbarment."[47]

2. To the extent applicable, Respondent **MUST** promptly comply with C.R.C.P. 242.32(b)-(e), concerning winding up of affairs, notice to current clients, duties owed in litigation matters, and notice to other jurisdictions where he is licensed or otherwise authorized to practice law.

3. Within fourteen days of issuance of the "Order and Notice of Disbarment," Respondent **MUST** file an affidavit with the Court under C.R.C.P. 242.32(f), attesting to his compliance with C.R.C.P. 242.32. As provided in C.R.C.P. 242.41(b)(5), lists of pending matters, lists of clients, and copies of client notices under C.R.C.P. 242.32(f) must be marked as confidential attachments and filed as separate documents from the affidavit.

[47] In general, an order and notice of sanction will issue thirty-five days after a decision is entered under C.R.C.P. 242.31(a)(6). In some instances, the order and notice may issue later than the thirty-five days by operation of C.R.C.P. 242.35, C.R.C.P. 59, or other applicable rules.

4. The parties **MUST** file any posthearing motions **no later than Thursday, October 13, 2022**. Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **no later than the date on which the notice of appeal is due**. Any response thereto **MUST** be filed within seven days.

6. Respondent **MUST** pay the costs of this proceeding. The People **MUST** submit a statement of costs **no later than Thursday, October 7, 2022**. Any response challenging the reasonableness of those costs **MUST** be filed within seven days thereafter.

7. Respondent **MUST** pay restitution in the amount of $10,000.00 to Scott Mathews, care of the Office of Attorney Regulation Counsel, **no later than Thursday, November 3, 2022**.

DATED THIS 29th DAY OF SEPTEMBER, 2022.

BRYON M. LARGE
PRESIDING DISCIPLINARY JUDGE