BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS

IN THE MATTER OF	§	
JULIET CAROL GILBERT	§	**CAUSE NO.** 54242
STATE BAR CARD NO. 17224050	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Chief Disciplinary Counsel of the State Bar of Texas (hereinafter called "Petitioner"), brings this action against Respondent, Juliet Carol Gilbert, (hereinafter called "Respondent"), showing as follows:

1. Pursuant to Rules 190.1 and 190.3, Texas Rules of Civil Procedure (TRCP), Petitioner intends discovery in this case to be conducted under the Level II Discovery Control Plan.

2. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

3. Respondent is a member of the State Bar of Texas and is licensed but not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Juliet Carol Gilbert, 9313 Cody Drive, Westminster, Colorado 80021.

4. On November 29, 2012, a Complaint (Exhibit 1) was filed in the Office of the Presiding Disciplinary Judge of the Supreme Court of Colorado in Case Number 12 PDJ 085, styled *Complainant: The People of the State of Colorado, Respondent: Juliet Carol Gilbert.*

5. On February 4, 2013, an Answer (Exhibit 2) was filed in the Office of the Presiding Disciplinary Judge of the Supreme Court of Colorado in Case Number 12PDJ085, styled *Complainant: The People of the State of Colorado, Respondent: Juliet Carol Gilbert.*

6. On July 17, 2013, an Opinion and Decision Imposing Sanctions (Exhibit 3) was filed in the Office of the Presiding Disciplinary Judge of the Supreme Court of Colorado in Case Number 12PDJ085, styled *Complainant: The People of the State of Colorado, Respondent: Juliet Carol Gilbert*, that states in pertinent part as follows:

> ... Respondent admits to two of the People's claims: violation of Colo. RPC 1.15(a) and 1.15(c). Colo. RPC 1.15(a) requires a lawyer to hold client property in a trust account, separate from the lawyer's own property. Respondent failed to keep Peters and Henderson's unearned fees in a trust account and negligently converted their funds in contravention of Colo. RPC 1.15(a). Similarly, Colo. RPC 1.15(c) mandates that a lawyer keep property in which two or more persons claim an interest separate from the lawyer's own property until there is an accounting and severance of the interests. Respondent placed Peters and Henderson's funds in her own business account without providing any accounting to them. She thereby violated Colo. RPC 1.15(c).
>
> Respondent did not directly admit at the disciplinary hearing that she violated Colo. RPC 1.5(f), but we find she did so. Colo. RPC 1.5(f) states that a lawyer does not earn fees "until the lawyer confers a benefit on the client or performs a legal service for the client"; it also notes that advances of unearned fees belong to the client and must be deposited in the lawyer's trust account until earned. Respondent admitted that she immediately placed Peters and Henderson's fees into her business account, not her trust account. The evidence also makes clear that she had not earned all of the fees upon receipt, when she deposited them in her business account and began using them for her own purposes. As such, the Hearing Board concludes that Respondent violated Colo. RPC 1.5(f).
>
> The Hearing Board therefore Orders:
>
> 1. JULIET CAROL GILBERT, attorney registration number 25640, is suspended for three months, ALL STAYED upon the successful completion of a six-month period of probation. . .

7. On October 18, 2013, an Order and Notice of Probation (Exhibit 4) was filed in the Office of the Presiding Disciplinary Judge of the Supreme Court of Colorado in Case Number 12PDJ085, styled *Complainant: The People of the State of Colorado, Respondent: Juliet*

Carol Gilbert, that states in pertinent part as follows:

> ...Juliet Carol Gilbert, Attorney Registration Number 25640, is placed on probation for a period of six months, effective October 18, 2013...

Certified copies of the Complaint, Answer, Opinion and Decision Imposing Sanctions and Order and Notice of Probation are attached hereto as Petitioner's Exhibits 1, 2, 3, and 4 and are made a part hereof for all intents and purposes as if the same were copied verbatim herein.

8. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Office of the Presiding Disciplinary Judge of the Supreme Court of Colorado and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

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Effective July 2009

SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES

Effective July 2009

SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES

SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

(a) "BODA" is the Board of Disciplinary Appeals.

(b) "Chair" is the member elected by BODA to serve as chairperson.

(c) "Classification" is the determination pursuant to TEXAS RULES OF DISCIPLINARY PROCEDURE ("TRDP") 2.10 by the Chief Disciplinary Counsel ("CDC") whether a grievance constitutes a "complaint" or an "inquiry."

(d) "Clerk" is the executive director or other person appointed by BODA to assume all duties normally performed by the clerk of a court.

(e) "Executive Director" is the executive director of BODA.

(f) "Panel" is any three-member grouping of BODA.

(g) "Party" is a complainant, respondent, or the CDC.

Rule 1.02 General Powers

Pursuant to TRDP 7.08J, BODA shall have and exercise all the powers of either a trial court or appellate court, as the case may be, in hearing and determining disciplinary proceedings; except that BODA judgments and orders shall be enforced in accordance with TRDP 15.03.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TEXAS RULES OF CIVIL PROCEDURE ("TRCP"), TEXAS RULES OF APPELLATE PROCEDURE ("TRAP"), and TEXAS RULES OF EVIDENCE ("TRE") apply to all disciplinary matters before BODA, except appeals from classification decisions, which are governed by Section 3 of these Internal Rules.

Rule 1.04 Appointment of Panels

(a) BODA may consider any matter or motion through appointment of a panel, except as specified in subpart (b) of this Rule. The chair may delegate appointment of panels for any BODA action to the executive director. Decisions shall be by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting *en banc*. Nothing

contained in these rules shall be construed to give a party the right to be heard by BODA sitting *en banc*.

(b) Any disciplinary matter naming a BODA member as respondent shall be considered by BODA sitting *en banc*.

Rule 1.05 Record Retention

Records of appeals from classification decisions shall be retained by the BODA clerk for a period of at least three (3) years from the date of disposition. Records of other disciplinary matters shall be retained for a period of at least five (5) years from the date of final judgment, or for at least one (1) year after the date a suspension or disbarment ends, whichever is later.

Rule 1.06 Trial Briefs

In any disciplinary proceeding before BODA, all trial briefs and memoranda must be filed with the clerk no later than ten (10) days before the hearing, except upon leave of BODA.

Rule 1.07 Service

In any disciplinary proceeding before BODA initiated by service of a petition upon the respondent, service shall be by personal service, certified mail with return receipt requested and delivery restricted to respondent as addressee only, or in any other manner permitted by applicable rule(s) and authorized by BODA that is reasonably calculated under all the circumstances to apprise the respondent of the proceeding and to give him or her reasonable time to appear and answer. The CDC may serve a petition by certified mail itself without the appointment of a private process server. To establish service by certified or registered mail, the return receipt must contain the respondent's signature.

Rule 1.08 Publication

The office of the CDC shall publish these rules as part of the TDRPC and TRDP and notify each respondent in a compulsory discipline, reciprocal discipline, revocation of probation, or disability matter filed with BODA where these rules are available.

Rule 1.09 Photocopying Costs

The clerk of BODA may charge to the requestor a reasonable amount for the reproduction of non-confidential documents filed with BODA. BODA may set a fee for the reproduction of documents. The fee shall include compensation for staff and recovery of actual production costs.

Rule 1.10 Abstracts

BODA may, in its sole discretion, periodically prepare abstracts of inquiries, grievances, or disciplinary proceedings for publication pursuant to Texas Gov't Code § 81.072(b)(3) and Part VI of the TRDP.

Rule 1.11 Hearing Setting and Notice

(a) **Original Petitions.** For any compulsory case, reciprocal case, revocation of probation, or other matter initiated by the CDC filing a petition with BODA, the CDC may contact the BODA clerk for the next regular available hearing date before filing the original petition. The CDC may then include in the petition a hearing notice specifying the date, time, and place of the hearing. The hearing date must be at least thirty (30) days from the date that the petition is served on the respondent, except in the case of a petition to revoke probation.

(b) **Filing without notice.** The CDC may file any matter with BODA without first obtaining a hearing date so long as it thereafter serves notice on the respondent of the date, time, and place of the hearing in accordance with TRCP 21a (or other applicable TRCP) at least thirty (30) days before the hearing date, except in the case of a petition to revoke probation.

(c) **Expedited settings.** If a party desires a hearing on a matter on a date other than the next regular available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. The expedited hearing setting must be at least thirty (30) days from the date of service of the petition, motion or other pleading, except in the case of a petition to revoke probation. BODA may grant or deny a request for an expedited hearing date in its sole discretion.

(d) **Setting notices.** BODA shall notify the parties by first class mail of any hearing date, other than a hearing set on the next regularly available hearing date as noticed in an original petition or motion.

(e) **Announcement docket.** Attorneys and parties appearing before BODA shall check in with the BODA clerk in the courtroom immediately prior to the time docket call is scheduled to begin. The chair will call an announcement docket immediately following the call to order of BODA hearings. Attorneys for each party with a matter on the docket shall appear at that time to give their announcement of readiness, a time estimate for the hearing, and any preliminary motions or matters. The chair will set and announce the order of cases to be heard following the docket announcements.

Rule 1.12 Time to Answer

An answer to any matter pending before BODA may be filed at any time prior to the day of the hearing on the merits except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.13 Facsimile and Electronic Filing

(a) Any document required to be filed with BODA may be filed by facsimile transmission with a copy to the BODA clerk by first class mail. A document filed by facsimile will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by facsimile after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day.

(b) Any document required to be filed with BODA may be filed by emailing a copy of the document file to the email address designated by BODA for that purpose with a copy sent to the BODA clerk by first class mail. A document filed by email will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by email after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day. The date and time of receipt shall be determined by the date and time shown on the BODA clerk's email.

(c) It is the responsibility of the party filing a document by facsimile or email to obtain the correct telephone number or email address for BODA and confirm that the document was received by BODA in legible form. Any document which is illegible or which cannot be opened as part of an email attachment by BODA will not be considered received or filed. Parties using facsimile or email filing must still comply with TRCP requirements for signatures.

(d) Papers will not be deemed filed if sent to any individual BODA member or other office or address.

Rule 1.14 Hearing Exhibits

Counsel should provide an original and twelve copies of any document, pleading, exhibit, or other material which the attorney intends to offer or otherwise make available to the BODA members at a hearing and not already filed with BODA prior to the hearing.

Rule 1.15 BODA Work Product and Drafts

Without limiting any exceptions or exemptions from disclosure contained in any other rules or statutes, a document or record of any nature, regardless of electronic or physical form, characteristics, or means of transmission, created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, by BODA staff or interns, or any other person acting on behalf of or at the direction of BODA.

Rule 1.16 BODA Opinions

(a) BODA may render judgment with or without written opinion in any disciplinary matter. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and shall be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this Rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this Rule and may be issued without a written opinion.

SECTION 2: ETHICAL CONSIDERATIONS

Rule 2.01 Representing or Counseling Parties in Disciplinary Matters And Legal Malpractice Cases

(a) No current member of BODA shall represent a party with respect to any disciplinary action or proceeding. No current member of BODA shall testify voluntarily or offer to testify voluntarily on behalf of a party in any disciplinary action or proceeding.

(b) No current BODA member may serve as an expert witness providing opinions regarding the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02 Confidentiality

(a) All BODA deliberations are confidential and shall not be disclosed by BODA members or staff. Classification appeals files and disability suspension files are confidential pursuant to the TRDP.

(b) If subpoenaed or otherwise compelled by law to testify in any proceeding, members of BODA shall not disclose matters discussed in conference concerning any disciplinary case, unless required to do so by a court of competent jurisdiction. If subpoenaed or otherwise compelled to attend any disciplinary proceeding, including depositions, a member of BODA shall promptly notify the chair of BODA and the CDC.

Rule 2.03 Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal respectively as provided in TRCP 18b.

(b) BODA members may, in addition to recusals pursuant to (a) above, voluntarily recuse themselves from any discussion and voting for any other reason.

(c) Nothing in these rules shall impute disqualification to lawyers who are members of or associated with BODA members' firms from serving on grievance committees or representing parties in disciplinary or legal malpractice cases; however, BODA members shall recuse themselves from any matter in which any lawyer who is a member of or associated with a BODA member's firm represents a party in any disciplinary proceeding or before BODA.

Rule 2.04 Communications with BODA

Correspondence or other communications relative to any matter pending before BODA must be conducted with the clerk and shall not be addressed directly to or conducted with any BODA member.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Appeal

(a) If the grievance filed by the complainant is not classified as a complaint, the CDC shall notify the complainant of his or her rights to appeal as set out in TRDP 2.10 or other applicable rule.

(b) To facilitate the potential filing of an appeal, the CDC shall send the complainant an Appeal Notice form with the classification disposition which shall include, but is not limited to, the docket number of the matter, the time deadline for appealing as set out in TRDP 2.10 or other applicable provision, and information for mailing or faxing the Appeal Notice to BODA.

Rule 3.02 Complaint on Appeal

BODA shall review only the original grievance on appeals from classification decisions. The CDC shall forward a copy of the complete grievance to BODA with supporting documentation as originally filed. BODA shall not consider any supplemental information which was not reviewed as part of the original screening and classification decision.

Rule 3.03 Notice of Disposition

BODA shall mail complainant, respondent, and the CDC written notice of the decision of the appeal by first class mail to the addresses provided BODA by the CDC in the appeal transmittal.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Signing, Filing, and Service

(a) **Signing.** Each brief, motion or other paper filed shall be signed by at least one attorney for the party or by the party *pro se* and shall give the State Bar of Texas identification number, mailing address, telephone number, email address, and telecopier number, if any, of each attorney whose name is signed thereto, or of the party (if applicable).

(b) **Number of Copies.** Each party shall file an original and two (2) copies of all briefs and motions with the clerk. Only one copy of the clerk's record and reporter's record shall be filed.

(c) **Service.** Copies of all papers other than the record filed by any party shall, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 4.02 Computation of Time

(a) **Beginnings of Periods.** The date the chair of the evidentiary panel signs its decision shall constitute the date of notice under TRDP 2.21.

(b) **TRAP Followed.** Computation of time for purposes of this section shall follow TRAP 4.1 and 9.2(b).

Rule 4.03 Record on Appeal

(a) **Contents.** The record on appeal shall consist of a clerk's record and where necessary to the appeal, a reporter's record.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and reporter's record to be included in the record on appeal by written stipulation filed with the custodian of records of the evidentiary panel.

(c) **Responsibility for Filing Record.** The custodian of records of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record if a notice of appeal has been filed. The court reporter is responsible for timely filing the reporter's record if a notice of appeal has been filed, the appellant has requested that the reporter's record be prepared, and the party responsible for initiating the appeal has paid the reporter's fee or has made satisfactory arrangements with the reporter. The party initiating the appeal shall pay the cost of preparing the record.

(d) **Clerk's Record.**

(1) Unless otherwise stipulated by the parties, the clerk's record on appeal shall include all papers on file with the evidentiary panel, including, but not limited to, the election letter, all pleadings upon which the hearing was held, the docket sheet, the evidentiary panel's charge, the final hearing order with attachments or exhibits, any findings of fact and conclusions of law, all other pleadings, the judgment or other order(s) appealed from, the notice of decision sent each party, any post-submission pleadings and briefs, and any notice of appeal.

(2) Upon receipt of a copy of the notice of appeal, the custodian of records in the individual CDC office which conducted the evidentiary hearing shall prepare and transmit the clerk's record to BODA If the CDC is unable for any reason to prepare and transmit the clerk's record by the due date, it shall promptly notify BODA and the parties, explain the reason(s) why it cannot be timely filed, and give the date by which it expects the clerk's record can be filed.

(3) The clerk's record should be in the following form:

(i) contain a detailed index identifying each document included in the record, the date of filing, and the page where it first appears;

(ii) arranged in ascending chronological order by document by date of filing or occurrence;

(iii) tabbed with heavy index tabs to show the beginning of each document;

(iv) consecutively numbered in the bottom right-hand corner of the pages;

(v) bound together so that the record will lie flat when opened; and

(vi) contain the custodian's certification that the documents contained in the clerk's record are true and correct copies and are all the documents required to be filed.

(e) **Reporter's Record.** The appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter for the reporter's record, designating the portion of the evidence and other proceedings to be included. A copy of such request shall be filed with the evidentiary panel and BODA and be served on the appellee. The reporter's record shall be certified by the official court reporter.

(f) **Non-Stenographic Recordings.** All testimony and evidence may be recorded at the evidentiary hearing by means other than stenographic recording, including videotape recordings; however, the non-stenographic recording shall not dispense with the requirement of a stenographic transcription of the hearing. In appeals to BODA, the non-stenographic recording must be transcribed and the transcription filed as the reporter's record.

(g) **Other Requests.** At any time before the clerk's record is prepared or within ten (10) days after service of a copy of appellant's request for the reporter's record, any party may request additional portions of the evidence and other proceedings to be included therein.

(h) **Inaccuracies or Defects.** Any inaccuracies in the record may be corrected by an agreement of the parties. Any dispute regarding the reporter's record shall be submitted by BODA to the evidentiary panel for resolution and to conform the reporter's record.

Rule 4.04 Time to File Record

(a) **Timetable.** The clerk's record and reporter's record (including a non-stenographic recording which has been transcribed) shall be filed with the BODA clerk within thirty (30) days after the date the notice of appeal is received by BODA. Failure to file either the clerk's record or the reporter's record within such time shall not affect BODA's jurisdiction, but shall be grounds for BODA exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or to apply presumptions against the appellant.

(b) **If No Record Filed.**

(1) If the clerk's record or reporter's record has not been timely filed, the BODA clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within thirty (30) days. The BODA clerk must send a copy of this notice to all the parties and the evidentiary panel.

(2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

(i) the appellant failed to request a reporter's record; or

(ii)(a) appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record; and

(b) the appellant is not entitled to proceed without payment of costs.

(c) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record BODA may, upon written motion of a party or upon its own motion, direct a supplemental record to be certified and transmitted by the CDC or the official court reporter.

Rule 4.05 Copies of the Record

The record shall not be withdrawn from the custody of the BODA clerk. Any party may obtain a copy of the record or any designated part thereof by making written request to the clerk and paying copying charges.

Rule 4.06 Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within thirty (30) days after the later of the date on which the clerk's record or the reporter's record was timely filed.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within thirty (30) days after the filing of appellant's brief.

(c) **Contents.** Briefs shall contain:

(1) a complete list of the names and addresses of all parties to the final decision and their counsel;

(2) a table of contents with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are

cited. The subject matter of each point or group of points shall be indicated in the table of contents;

(3) a brief general statement of the nature of the cause or offense and the result;

(4) a statement of the points upon which an appeal is predicated or the issues presented for review;

(5) a brief of the argument;

(6) prayer for relief; and,

(7) an appendix consisting of copies of pertinent parts of the record upon which the party relies.

(d) **Length of Briefs.** Briefs shall be typewritten or otherwise legibly printed on letter-size (8½" x 11") paper and shall not exceed fifty (50) pages in length, exclusive of pages containing names and addresses of parties, table of contents, index of authorities, points of error, and any addenda or appendix containing statutes, rules, regulations, etc., except upon leave of BODA.

(e) **Amendment or Supplementation.** Briefs may be amended or supplemented upon leave of BODA.

(f) **Failure to File a Brief.** If the appellant fails to timely file a brief, BODA may:

(1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure and the appellee is not significantly injured by the appellant's failure to timely file a brief; or

(2) decline to dismiss the appeal and give further direction to the case as it considers proper.

Rule 4.07 Oral Argument

(a) **Request.** A party desiring oral argument before BODA shall request same in writing and include the request in the notice of appeal or on the front cover of that party's first brief. BODA may grant or deny the request in its sole discretion. If oral argument is granted, the clerk shall notify the parties of the time and place for submission. BODA may also advance cases without oral argument or direct parties on its own initiative to appear and submit oral argument on a case. The parties may agree to submit the case without argument after requesting same.

(b) **Time Allowed.** Each party shall have twenty (20) minutes in which to argue. BODA may, upon request of a party or in its discretion, extend or shorten the time allowed for oral argument.

Rule 4.08 Motions Generally

An application for an order or other relief shall be made by filing a motion with the BODA clerk for same supported by sufficient cause with proof of service on all other parties. The motion shall state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other papers shall be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. BODA may determine a motion before a response is filed.

Rule 4.09 Motions for Extension of Time

(a) **When due.** Any request for extension of time other than to file a brief must be filed with the BODA clerk no later than fifteen (15) days after the last day allowed for filing the item in question.

(b) **Contents.** All motions for extension of time shall be in writing, comply with BODA Internal Procedural Rule 4.08, and specify the following:

(1) the date of notice of decision of the evidentiary panel, together with the number and style of the case;

(2) if the appeal has been perfected, the date when the appeal was perfected;

(3) the original deadline for filing the item in question;

(4) the length of time requested for the extension;

(5) the number of extensions of time which have been granted previously regarding the item in question; and,

(6) the facts relied upon to reasonably explain the need for an extension.

(c) **For Filing Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied upon to reasonably explain the need for an extension must be supported by an affidavit of the court reporter, which shall include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

Rule 4.10 Decision and Judgment

(a) **Decision.** BODA may affirm in whole or in part the decision of the evidentiary panel, modify the panel's finding(s) and affirm the finding(s) as modified, reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered, or reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:

(1) the panel that entered the finding(s); or,

(2) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) **Notice of Orders and Judgment.** When BODA renders judgment or grants or overrules a motion, the clerk shall give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be. The notice shall be given by first-class mail and be marked so as to be returnable to the clerk in case of nondelivery.

(c) **Mandate.** In every case where BODA reverses or otherwise modifies the judgment appealed from, BODA shall issue a mandate in accordance with its judgment and deliver it to the evidentiary panel.

Rule 4.11 Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal

(a) for want of jurisdiction;

(b) for want of prosecution; or

(c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

(a) Before filing a motion with BODA seeking to revoke the probation of an attorney who has been sanctioned, the CDC shall contact the BODA clerk to confirm whether the next regular available hearing date will comply with the thirty-day requirement of TRDP. The chair may designate a three-member panel to hear the motion, if necessary, to meet the thirty-day requirement of TRDP 2.23.

(b) Upon filing of the motion, the CDC shall serve the respondent in accordance with TRDP 2.23 with the motion and supporting documents, if any, in accordance with the TRCP and these rules. The CDC shall notify BODA of the date service is obtained on the respondent.

Rule 5.02 Hearing

Within thirty (30) days of service of the motion on the respondent, BODA shall docket and set the matter for a hearing and notify the parties of the time and place for the hearing; however, upon a showing of good cause by a party or upon its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE MATTERS

Rule 6.01 Initiation of Proceeding

Pursuant to TRDP 8.03, the CDC shall file a petition for compulsory discipline with BODA and serve the respondent in accordance with the TRDP and Rule 1.07 above.

Rule 6.02 Notice of Decision

The BODA clerk shall mail a copy of the judgment to the parties within ten (10) days from the date the decision is signed by the chair. Transmittal of the judgment shall include all information required by the TRDP and the Supreme Court.

SECTION 7: RECIPROCAL DISCIPLINE MATTERS

Rule 7.01 Initiation of Proceeding

(a) Pursuant to TRDP 9.01 and 9.02, the CDC shall file a petition for reciprocal discipline with BODA when information is received indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction.

(b) The petition shall request that the respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction including a copy of the order or judgment, if any, rendered against the respondent. The CDC shall serve the respondent in accordance with Rule 1.07 above.

Rule 7.02 Order to Show Cause

Upon the filing of the petition with BODA, the chair shall immediately issue a show cause order including a hearing setting notice and forward it to the CDC, who shall serve the order on the respondent. The CDC shall notify BODA of the date service is obtained.

Rule 7.03 Attorney's Response

If, on or before the thirtieth day after service of the show cause order and hearing notice by the CDC, the respondent does not file an answer but thereafter appears at the hearing, BODA may, at the discretion of the chair, receive testimony from the respondent relating to the merits of the petition for reciprocal discipline.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds pursuant to TRDP 2.17P(2) or the CDC believes pursuant to TRDP 2.14C that a respondent is suffering from a disability, the rules in this section shall apply to the District Disability Committee *de novo* proceeding held pursuant to TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's report that an attorney is believed to be suffering from a disability, the BODA chair shall appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. The BODA clerk shall notify the CDC and respondent that a committee has been appointed and notify the respondent where the procedural rules governing disability proceedings are available.

(c) A respondent notified to appear at a District Disability Committee hearing may, at any time, waive that hearing in writing and enter into an agreed judgment of indefinite disability suspension or probated suspension, provided that the respondent is competent to so waive the hearing. If the respondent is not represented, the waiver shall include a statement by the respondent that he has been advised of his right to have counsel appointed for him and that he waives that right.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee shall be filed with the BODA clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA chair may appoint a substitute member.

Rule 8.02 Hearing Order

(a) Upon being notified that the District Disability Committee has been appointed by BODA, the CDC shall, within twenty (20) days, file with the BODA clerk and then serve upon the respondent either in person or by certified mail, return receipt requested with delivery restricted to the respondent as addressee with a copy by first class mail, a proposed hearing order containing a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. If service is by certified mail, the return receipt with the respondent's signature must be filed with the BODA clerk.

(b) The respondent shall, within twenty (20) days after receiving the CDC's proposed hearing order, file with the BODA clerk and serve the CDC by certified mail a proposed hearing order including a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. Respondent's failure to timely file the proposed hearing order will not affect the responsibility of the District Disability Committee to issue a final hearing order.

(c) The District Disability Committee chair may adopt either the CDC's proposed hearing order, the respondent's proposed hearing order, or an order of his or her own. The BODA clerk shall prepare the final hearing order at the instruction of the District Disability Committee chair and send to the parties by first class mail. The BODA clerk shall set the final hearing date at the instruction of the chair. The adopted order shall be the final hearing order and shall contain a date, time, and place for the hearing. That order may contain provisions requiring a physical or mental examination of the respondent.

(d) Requests for an extension of time to file the proposed hearing order by either party must be by written motion filed with the BODA clerk.

Rule 8.03 Provisions for Physical or Mental Examinations

(a) Upon motion by the CDC or upon its own motion, the District Disability Committee may order the respondent to submit to a physical and/or mental examination by a qualified health care or mental health care professional. The respondent shall be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination. Any objections(s) to the motion for an exam and request for a hearing shall be filed with the BODA clerk within fifteen (15) days of receipt of the motion.

(b) The examining professional shall file with the BODA clerk his detailed written report setting out findings, including results of all tests made, diagnoses and conclusions, and deliver a copy to the CDC and to the respondent.

(c) Nothing contained herein shall be construed to limit the respondent's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

Rule 8.04 Ability to Compel Attendance

The respondent and the CDC may, if they so choose, confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses, enforceable by an order of a district court of proper jurisdiction, is available to the respondent and the CDC, by requesting a subpoena be issued as provided in TRCP 176.

Rule 8.05 Respondent's Right to Counsel

(a) The notice to the respondent that a District Disability Committee has been appointed and the notice transmitting the CDC's proposed hearing order shall state that the respondent may request appointment of counsel by BODA to represent him or her at the disability hearing.

(b) If the respondent wishes to have counsel appointed pursuant to TRDP Rule 12.02, a written request must be filed with the BODA clerk within sixty (60) days of the date respondent receives the CDC's proposed hearing order. Any request for appointment of counsel after sixty (60) days from the date of receipt of the proposed hearing order must show good cause for the failure to do so timely and that the request is not sought for delay only.

Rule 8.06 Limited Discovery

(a) In the sole discretion of the District Disability Committee, limited discovery is permissible upon a clear showing of good cause and substantial need. The parties seeking discovery must file with the BODA clerk a verified written request for discovery showing good cause and substantial need with the proposed hearing order.

(b) If good cause and substantial need are demonstrated, the District Disability Committee shall by written order permit the discovery, including in the final hearing order limitations or deadlines on the discovery. Such discovery, if any, as may be permitted, must be conducted by methods provided in the TRCP in effect at the time and may upon motion be enforced by a district court of proper jurisdiction.

(c) A decision of a District Disability Committee on a discovery matter may be reviewed only on appeal of the entire case. A reversal of the case may not be based upon the granting or denial of a discovery request without a showing of material unfairness or substantial harm.

Rule 8.07 Hearing

(a) The party seeking to establish the disability must prove by a preponderance of the evidence that the respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee shall admit all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the TRE; provided, however, that the admission or exclusion of evidence shall be in the sole discretion of the chair. No ruling on evidence shall be a basis for reversal solely because it fails to strictly comply with the TRE.

(b) Such proceedings shall begin and conclude no earlier than thirty (30) days from the date the respondent receives the CDC's proposed hearing order nor later than ninety (90) days from that date; however, failure to do so does not affect the jurisdiction of the District Disability Committee to act. Nothing herein shall be construed to limit the parties' right to request a continuance of the hearing for good cause.

(c) If the Committee is unable for any reason to hold a hearing within ninety (90) days of the date the respondent receives the proposed hearing order, BODA may appoint a new committee to handle the case.

Rule 8.08 Notice of Decision

The District Disability Committee shall certify its finding and any recommendations to BODA which shall issue the final judgment in the matter.

Rule 8.09 Confidentiality

All proceedings before the District Disability Committee are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court.

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. All such petitions shall be filed with the BODA clerk. The petitioner shall also serve a copy of the petition on the CDC as set forth in TRDP 12.06. After the petition is filed, the TRCP shall apply except when in conflict with these rules. Service shall be in accordance with the TRDP and these rules.

(b) The petition shall set forth the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition shall affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may seal all or any part of the record of the proceeding.

Rule 9.02 Discovery

The parties shall have sixty (60) days from the date of the filing of the petition for reinstatement in which to conduct discovery. The matter shall be set for a hearing by the BODA clerk on the next available hearing date after the expiration of the sixty (60) days, and the clerk shall so notify the parties of the time and place of the hearing. Nothing contained herein shall preclude either party from requesting a continuance for good cause.

Rule 9.03 Physical or Mental Examinations

(a) BODA may order the petitioner seeking reinstatement to submit to a physical and/or mental examination by a qualified health care or mental health care professional upon written motion of the CDC or its own motion. The petitioner shall be served with a copy of the motion and given at least seven (7) days to respond. BODA may grant or deny the motion with or without a hearing.

(b) The petitioner shall be given reasonable notice of the examination by written order specifying the name, address and telephone number of the person conducting the examination.

(c) The examining professional shall deliver to BODA and the parties a copy of a detailed written report setting out findings, including results of all tests made, diagnoses and conclusions.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing contained herein shall be construed to limit the petitioner's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

Rule 9.04 Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include such other orders as protecting the public and the petitioner's potential clients may require.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT

Rule 10.01 Docketing by the Clerk

(a) All appeals to the Supreme Court from determinations by BODA on a decision of a District Grievance Committee's evidentiary panel concerning the imposition or failure to impose sanctions, appeals from determinations on compulsory discipline, reciprocal discipline, revocations of probation, and disability suspensions will be docketed by the clerk of the Supreme Court in the same manner as petitions for review.

(b) No fee shall be charged by the clerk for filing any appeal from BODA decisions.

(c) The notice of appeal must be filed directly with the clerk of the Supreme Court within fourteen (14) days after receipt of notice of a final determination by BODA. The record must be filed within sixty (60) days after BODA's determination. The appealing party's brief is due thirty (30) days after the record, and the responding party's brief must be filed within thirty (30) days thereafter.

(d) The BODA clerk shall include the information contained in subpart (c) above with transmittal of each final determination to the parties.

Rule 10.02 Appellate Rules to Apply

(a) The TRAP will apply to these appeals to the extent they are relevant. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court's decisions on sanctions, compulsory discipline, reciprocal discipline, revocations of probation, and disability suspension cases will be announced on the Court's orders. Following review by the Court, these appeals will be available for public inspection in the office of the Clerk of the Supreme Court, unless the file or some portion thereof is confidential under the TRDP.

(b) The Court may affirm a decision of BODA by order without written opinion.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 1560 Broadway, Suite 675 Denver, Colorado 80202	**FILED** NOV 2 9 2012 PRESIDING DISCIPLINARY JUDGE SUPREME COURT OF COLORADO
Complainant: THE PEOPLE OF THE STATE OF COLORADO Respondent: JULIET CAROL GILBERT	▲COURT USE ONLY▲ Case Number: 12 PDJ 085
Adam J. Espinosa, #33937 Assistant Regulation Counsel John S. Gleason, #15011 Regulation Counsel Attorneys for Complainant 1560 Broadway, Suite 1800 Denver, Colorado 80202 Telephone: (303) 866-6478 Fax No.: (303) 893-5302 Email: a.espinosa@csc.state.co.us	Supreme Court State of Colorado Certified to be a full, true and correct copy NOV 0 5 2013 Office of the Presiding Disciplinary Judge By

COMPLAINT

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. Respondent has taken and subscribed the oath of admission, was admitted to the bar of this court on June 14, 1995, and is registered upon the official records of this court, registration no. 25640. She is subject to the jurisdiction of this court in these disciplinary proceedings. Respondent's registered business address is 8671 Wolff Court, #260, Westminster, Colorado 80031.

General Allegations

2. On May 24, 2011, Complainants, Christopher Henderson and his wife Victoria Henderson ("Hendersons"), retained Respondent to provide legal services to Ms. Henderson in connection with her removal proceedings before the immigration court.

3. Ms. Henderson is a Trinidad national who obtained her visitor's visa in 2000. Mr. Henderson is a U.S. citizen by birth. They were married in 2004.

Exhibit
1

4. Prior to retaining Respondent, Mr. Henderson filed an I-130 Petition on behalf of Ms. Henderson *pro se*.

5. Ms. Henderson's Master Calendar Hearing was scheduled for May 31, 2011.

6. In the I-130 Petition, Mr. Henderson failed to disclose that he was married to Carmen Sanchez ("Sanchez"), a Dominican Republic national, in 1996.

7. Mr. Henderson also failed to disclose in the I-130 Petition that his marriage to Sanchez was determined to be a sham marriage.

8. Neither Mr. Henderson nor Sanchez terminated or annulled their marriage.

9. In 2005 and 2006, the Hendersons met with representatives of the United States Citizenship and Immigration Services ("USCIS").

10. USCIS determined that the Hendersons were married only to obtain lawful status for Ms. Henderson.

11. On May 23, 2012, the Hendersons met with Respondent to discuss their case. At that time, they paid Respondent a $100 consultation fee.

12. The next day, Respondent sent the Hendersons an engagement letter memorializing their meeting and defining the scope of her representation if retained by the Hendersons.

13. The written agreement was that the Hendersons would pay Respondent a $3,550 flat fee to represent Ms. Henderson before the immigration court, to prepare a second I-130 Petition, and to accompany Ms. Henderson to her interview with USCIS.

14. The written agreement required an initial payment of $2,000 no later than May 27, 2011.

15. The remaining $1,550 portion of the flat fee was due as follows: $350 due on or before June 27, 2011; $300 on or before July 27, 2011; $300 on or before August 27, 2011; $300 on or before September 27, 2011; and $300 on or before October 27, 2011.

16. The written flat fee agreement did not include benchmarks indicating when Respondent would earn her fee.

17. On May 25, 2011, the Hendersons hired Respondent and signed and returned the engagement letter, which contained the written basis for Respondent's fee.

18. On May 27, 2011, the Hendersons paid Respondent $2,000 by money order.

19. On that same day, May 27, 2011, Respondent deposited the entire $2,000 retainer into

her business account.

20. Respondent's business account had a balance of $284.02 prior to the deposit.

21. On May 31, 2011, Respondent appeared in Immigration Court for the Master Calendar Hearing.

22. Because Respondent had been recently retained, Respondent requested a continuance of the hearing to allow her time to prepare for the hearing.

23. Respondent also sought a continuance to allow Mr. Henderson time to seek an annulment of his earlier marriage to Sanchez so Respondent could file a second I-130 Petition.

24. The Master Calendar Hearing was brief and the immigration court granted Respondent's oral motion to continue.

25. The immigration court reset the hearing to March 13, 2012.

26. Pursuant to their written agreement, the Hendersons made the following additional payments towards Respondent's total retainer fee: $350 on June 28, 2011; $300 on August 1, 2011; $300 on August 20, 2011.

27. Including their initial payment to Respondent on May 27, 2011, the Hendersons made four payments totaling $2,950 towards Respondent's retainer fee.

28. In all instances, Respondent deposited the Hendersons retainer funds into her business account and not her COLTAF account.

29. In all instances, Respondent converted the Hendersons retainer funds to her personal use or benefit.

30. The Hendersons did not authorize Respondent to use their funds for her own personal use or benefit.

31. The Hendersons did not authorize Respondent to use their funds for any purpose other than for their legal matter.

32. From May to October 2011, the Hendersons attempted to contact Respondent by telephone but Respondent failed to return their calls.

33. Respondent did send the Hendersons several letters and emails, mostly requesting payment toward her retainer fee.

34. On November 15, 2011, the Hendersons terminated Respondent's representation by email.

35. In the email, the Hendersons requested a refund of all of their retainer funds except for one hour of fees for Respondent's appearance at the May 31, 2011 hearing.

36. Respondent agreed to withdraw and filed a motion to withdraw with the immigration court.

37. On December 26, 2011, the Hendersons emailed Respondent a copy of the immigration court's order granting Respondent's Motion to Withdraw. In the email, they again requested a refund of their retainer refunds.

38. On December 30, 2011, Respondent mailed the Hendersons a letter explaining that she earned $1,114.14 of the retainer fee along with a partial refund check.

39. In her letter, Respondent indicated that she did 4.41 hours of legal work which she billed at a rate of $250 per hour and that she also incurred costs in the mount of $11.64, for a total of $1,114.14.

40. Since the Hendersons had paid Respondent advanced fees totaling $2,950 thus far, Respondent refunded $1,835.86 to the Hendersons.

41. The refund was paid by Respondent with two money orders from funds she accessed in her business account.

42. On January 1, 2012, Ms. Henderson sent an email to Respondent confirming that she received Respondent's letter and refund.

43. In her email, Ms. Henderson disputed the $1,114.14 of the retainer fund that Respondent kept as earned fees and requested an accounting.

44. Respondent did not provide an accounting to the Hendersons until March 19, 2012, after the Hendersons filed their request for investigation with the Office of Attorney Regulation Counsel.

CLAIM I

[Fees Are Not Earned Until the Lawyer Confers a Benefit on the Client or Performs a Legal Service for the Client -- Colo. RPC 1.5(f)]

45. Paragraphs 1 through 44 are incorporated herein as if fully set forth.

46. Colo. RPC 1.5(f) states, "Fees are not earned until the lawyer confers a benefit on the client nor performs a legal service for the client. Advances of unearned fees are the property of the client and shall be deposited in the lawyer's trust account pursuant to Rule 1.15(f)(1) until earned."

47. Respondent violated Colo. RPC 1.5(f) by immediately depositing unearned retainer funds belonging to the Hendersons into her business/personal checking account prior to

conferring a benefit on the Hendersons and prior to earning the retainer funds. Respondent also violated Colo. RPC 1.5(f) by failing to maintain the unearned retainer funds provided by the Henderson's in Respondent's COLTAF account.

WHEREFORE, the complainant prays at the conclusion hereof.

CLAIM II
[Failure to Keep Client or Third Party Funds Separate From the Lawyer's Own Property and Negligent Conversion of Client or Third Party Funds -- Colo. RPC 1.15(a)]

48. Paragraphs 1 through 44 are incorporated herein as if fully set forth.

49. Colo. RPC 1.15(a) states, "A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such funds and other property of clients or third parties shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation."

50. Respondent violated Colo. RPC 1.15(a) by failing to safeguard unearned funds belonging to the Hendersons and by converting unearned funds belonging to the Hendersons for her own benefit.

WHEREFORE, the complainant prays at the conclusion hereof.

CLAIM III
[Failure to Promptly Render a Full Accounting --Colo. RPC 1.15(b)]

51. Paragraphs 1 through 44 are incorporated herein as if fully set forth.

52. Colo. RPC 1.15(b) states, "Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall, promptly or otherwise as permitted by law or by agreement with the client or third person, deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, promptly upon request by the client or third person, render a full accounting regarding such property."

53. Respondent violated Colo. RPC 1.15(b) by failing to promptly provide an accounting to the Hendersons when they requested one.

WHEREFORE, the complainant prays at the conclusion hereof.

CLAIM IV
[Failing to Keep Disputed Property Separate Until There is an Accounting and Severance of the Disputed Interest – Colo. RPC 1.15(c)]

54. Paragraphs 1 through 44 are incorporated herein as if fully set forth.

55. Colo. RPC 1.15(c) states, "When in connection with a representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute."

56. Respondent violated Colo. RPC 1.15(c) by failing to keep the Hendersons' retainer funds separate from Respondent's funds until there was an accounting and severance of the Hendersons' interests in the retainer funds.

WHEREFORE, the complainant prays at the conclusion hereof.

CLAIM V
[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)]

57. Paragraphs 1 through 44 are incorporated herein as if fully set forth.

58. Colo. RPC 1.16(d) states, "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, 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 or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law."

59. Respondent violated Colo. RPC 1.16(d) by failing to refund all unearned retainer fees to the Hendersons.

WHEREFORE, the complainant prays at the conclusion hereof.

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

60. Paragraphs 1 through 44 are incorporated herein as if fully set forth.

61. Colo. RPC 8.4(c) states, "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

62. Respondent violated Rule 8.4(c) by knowingly converting unearned retainer funds provided by the Hendersons.

WHEREFORE, the People pray that 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; Respondent be appropriately disciplined for such misconduct; Respondent be required to refund

fees to the client, and/or the client protection fund pursuant to C.R.C.P. 252.14(b), Respondent be required to return client files (or other client property); Respondent be required to take any other remedial action appropriate under the circumstances; and Respondent be assessed the costs of this proceeding.

DATED this 29th day of November, 2012.

Respectfully submitted,

Adam J. Espinosa, #33937
Assistant Regulation Counsel
John S. Gleason, #15011
Regulation Counsel

Attorneys for Complainant

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 1560 Broadway, Suite 675 Denver, Colorado 80202	**FILED** FEB 04 2013 PRESIDING DISCIPLINARY JUDGE SUPREME COURT OF COLORADO ▲ COURT USE ONLY ▲
Complainant: THE PEOPLE OF THE STATE OF COLORADO Respondent: JULIET CAROL GILBERT	Case Number: 12PDJ085
Nancy L. Cohen, #11846 Attorney for Respondent MiletichCohen PC 1660 Wynkoop, Suite 1160 Denver, Colorado 80202 Telephone: (303) 825-5500 Facsimile: (303) 515-6655 E-mail: ncohen@mcpclaw.com	**Supreme Court** State of Colorado Certified to be a full, true and correct copy NOV 0 5 2013 Office of the Presiding Disciplinary Judge By
ANSWER	

Respondent Juliet Carol Gilbert ("Gilbert" or "Respondent") answers the People's Complaint as follows:

JURISDICTION

1. Admits.

GENERAL ALLEGATIONS

2. Admits Christopher Henderson and Victoria Peters (collectively "Hendersons") retained Respondent on May 25, 2011 to represent Ms. Henderson in connection with removal proceedings pending in the immigration court. Gilbert

Exhibit
2

affirmatively states that she was also retained by the Hendersons to represent them in filing and preparing a new family based immigration petition.

3. Admits.

4. Admits Mr. Henderson previously filed an I-130 Petition with the assistance of an attorney.

5. Admits.

6. Admits.

7. Admits.

8. Upon information and belief, Respondent admits that neither Mr. Henderson nor Carmen Sanchez terminated or annulled their marriage.

9. Admits.

10. Admits.

11. Admits.

12. Admits.

13. Gilbert states the document referenced in Paragraph 13 speaks for itself, and denies the allegations of Paragraph 13 to the extent they are inconsistent with the language contained in the document.

14. Admits.

15. Admits.

16. Gilbert admits the retainer agreement did not contain benchmarks but denies she did not earn a portion of the retainer paid.

17. Gilbert admits the Hendersons retained her and signed and returned the retainer agreement. Gilbert states the document referenced in Paragraph 17 speaks for itself, and denies the allegations of Paragraph 17 to the extent they are inconsistent with the language contained in the document.

18. Admits.

19. Admits.

20. Denies.

21. Admits.

22. Gilbert admits she requested a continuance of the hearing to allow her time to prepare Ms. Peters' case, and as a strategy to give Ms. Peters more time to address some of the issues raised by the previous filings. Gilbert denies the remaining allegations.

23. Admits.

24. Gilbert admits the immigration court granted her motion for continuance and denies the remaining allegations.

25. Admits.

26. Gilbert admits the Hendersons made the payments set forth in paragraph 26.

27. Admits.

28. Admits.

29. Denies.

30. Admits.

31. Admits.

32. Denies.

33. Gilbert admits she sent written communications to the Hendersons, some of which requested payment.

34. Gilbert admits that on November 15, 2011, Gilbert had a telephone conversation with Mr. Henderson during which he stated he did not think lawyers were trustworthy and Gilbert responded that if he did not trust her, then perhaps he should consider getting a different lawyer. Gilbert also admits she received an email from Ms. Peters about the representation being terminated.

35. Gilbert states the document referenced in Paragraph 35 speaks for itself, and denies the allegations of Paragraph 35 to the extent they are inconsistent with the language contained in the document.

36. Admits.

37. Admits that on December 26, 2011, the Hendersons emailed Gilbert a copy of the immigration court's order granting Respondent's motion to withdraw. Gilbert states the document referenced in Paragraph 37 speaks for itself, and denies the allegations of Paragraph 37 to the extent they are inconsistent with the language contained in the document.

38. Admits.

39. Admits.

40. Admits the Hendersons paid $2,950.00 to Gilbert and that Gilbert refunded $1,835.86 to them.

41. Admits.

42. Admits.

43. Admits.

44. Admits that a more detailed accounting was provided and denies it was the only accounting provided.

CLAIM I
[Fees Are Not Earned Until the Lawyer Confers a Benefit on the Client or Performs a Legal Service for the Client – Colo. RPC 1.5(f)]

45. Gilbert admits and denies as set forth in paragraphs 1 through 44.

46. Admits that Colo. RPC 1.5(f) is a rule of professional conduct that speaks for itself, and denies the allegations of Paragraph 46 to the extent they are inconsistent with the language contained in the rule.

47. Gilbert admits she deposited funds into her business account and did not deposit the funds into a COLTAF account. Gilbert affirmatively states she quickly conferred a benefit for some of the fees she received. She denies the remaining allegations.

CLAIM II
[Failure to Keep Client or Third Party Funds Separate From the Lawyer's Own Property and Negligent Conversion of Client or Third Party Funds – Colo. RPC 1.15(a)]

48. Gilbert admits and denies as set forth in paragraphs 1 through 47.

49. Admits Colo. RPC 1.15(a) is a rule of professional conduct that speaks for itself, and denies the allegations of Paragraph 49 to the extent they are inconsistent with the language contained in the rule.

50. Gilbert denies she failed to safeguard funds belonging to the Hendersons. Gilbert admits her business account at times dropped below some of the amount of the retainer she had not yet earned. Gilbert denies the remaining allegations. Gilbert affirmatively states she promptly refunded the unearned fees.

CLAIM III
[Failure to Promptly Render a Full Accounting – Colo. RPC 1.15(b)]

51. Gilbert admits and denies as set forth in paragraphs 1 through 51.

52. Admits Colo. RPC 1.15(b) is a rule of professional conduct that speaks for itself, and denies the allegations of Paragraph 52 to the extent they are inconsistent with the language contained in the rule.

53. Denies.

CLAIM IV
[Failing to Keep Disputed Property Separate Until There is an Accounting and Severance of the Disputed Interest – Colo. RPC 1.15(c)]

54. Gilbert admits and denies as set forth in paragraphs 1 through 53.

55. Admits Colo. RPC 1.15(c) is a rule of professional conduct that speaks for itself, and denies the allegations of Paragraph 55 to the extent they are inconsistent with the language contained in the rule.

56. Gilbert admits she did not keep the funds not yet earned separate from her funds and denies the remaining allegations.

CLAIM V
[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)]

57. Gilbert admits and denies as set forth in paragraphs 1 through 56.

58. Admits Colo. RPC 1.16(d) is a rule of professional conduct that speaks for itself, and denies the allegations of Paragraph 58 to the extent they are inconsistent with the language contained in the rule.

59. Denies.

CLAIM VI
[A Lawyer Shall Not Engage in Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation (Knowing Conversion) – Colo. PRC 8.4(c)]

60. Gilbert admits and denies as set forth in paragraphs 1 through 59.

61. Admits Colo. RPC 8.4(c) is a rule of professional conduct that speaks for itself, and denies the allegations of Paragraph 61 to the extent they are inconsistent with the language contained in the rule.

62. Denies.

SPECIAL DENIAL

All allegations of the Complaint that require an answer at this time that are not expressly admitted are hereby denied.

AFFIRMATIVE DEFENSES

Without waiving any arguments, Gilbert may be entitled to assert regarding the burden of proof, legal presumptions, or other legal characterizations:

63. The Complaint fails to state a claim upon which relief can be granted.

64. Gilbert reserves the right to amend, or to seek leave to amend this Answer and the right to add or withdraw affirmative and other defenses as discovery or disclosure progresses and as necessary for trial.

WHEREFORE, having fully answered the Complaint, Gilbert respectfully requests that this Honorable Court:

A. Dismiss any portion of the People's Complaint that fails to state a claim with prejudice;

B. Grant such other and further relief as the Court deems just and proper.

Dated this 4th day of February, 2013.

MILETICHCOHEN PC

Nancy L. Cohen, Reg. No. 11846

ATTORNEY FOR RESPONDENT JULIET CAROL GILBERT

CERTIFICATE OF MAILING

I hereby certify that one copy of the foregoing **ANSWER** was placed in the United States mail, postage prepaid, this 4th day of February, 2013, and addressed to:

Adam J. Espinosa
Assistant Regulation Counsel
1560 Broadway, Suite 1800
Denver, Colorado 80202

Kim Christiansen

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:
JULIET CAROL GILBERT

Case Number:
12PDJ085

OPINION AND DECISION IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.19(b)

On May 21 and 22, 2013, a Hearing Board composed of W. Eric Kuhn and B. Lawrence Theis, members of the bar, and William R. Lucero, the Presiding Disciplinary Judge ("the PDJ"), held a hearing pursuant to C.R.C.P. 251.18. Adam J. Espinosa appeared for the Office of Attorney Regulation Counsel ("the People"), and Nancy L. Cohen appeared on behalf of Juliet Carol Gilbert ("Respondent"). The Hearing Board now issues this "Opinion and Decision Imposing Sanctions Pursuant to C.R.C.P. 251.19(b)."

I. SUMMARY

In the course of representing clients in an immigration case, Respondent commingled unearned legal fees with her personal funds and unintentionally used those fees for her own purposes. Through this conduct, Respondent violated Colo. RPC 1.15(a), 1.15(c), and 1.5(f). The Hearing Board cannot find by clear and convincing evidence, however, that Respondent knowingly converted unearned fees in contravention of Colo. RPC 8.4(c). We also cannot conclude that she failed to provide a proper accounting to her clients or failed to refund unearned fees in violation of Colo. RPC 1.15(b) or 1.16(d). Taking into account both the gravity of Respondent's actions and the extensive mitigating factors present, the Hearing Board concludes that the appropriate sanction is a three-month suspension, all stayed upon successful completion of a six-month period of probation, with conditions.

II. PROCEDURAL HISTORY

The People filed their complaint in this matter on November 29, 2012, alleging that Respondent violated Colo. RPC 1.5(f), 1.15(a), 1.15(b), 1.15(c), 1.16(d), and 8.4(c). Respondent filed her answer on February 4, 2013.

Exhibit
3

On March 26, 2013, Respondent filed a motion in limine asking the PDJ to preclude the introduction of evidence concerning a foreclosure action initiated, and later dismissed, against her in Jefferson County District Court. The PDJ denied the motion, ruling that Respondent's financial circumstances were relevant to the People's Colo. RPC 8.4(c) claim and to the Hearing Board's sanctions analysis, and that such evidence was not overly prejudicial.

On April 22, 2013, the PDJ granted the People's motion to disqualify John M. Lebsack from the Hearing Board after he disclosed that his firm, White and Steele, P.C., retained Nancy Cohen in the past year and contemplates retaining her in the future.

Respondent moved for partial summary judgment on March 26, 2013, seeking judgment in her favor on the claims premised upon Colo. RPC 1.15(b), 1.16(d), and 8.4(c). Upon review of the People's response and Respondent's reply, the PDJ denied the motion on May 10, 2013, finding the motion presented mixed questions of law and fact rendering summary judgment inappropriate.

Respondent moved for a protective order on May 2, 2013, asking the PDJ to seal approximately one hundred pages of her business and personal checking account records, which the People attached as exhibits to two pleadings. The PDJ granted the motion on May 16, 2013, finding Respondent had demonstrated good cause to protect these otherwise confidential documents in accordance with C.R.C.P. 251.31(e).

On May 17, 2013, the People filed a motion to strike certain portions of Respondent's hearing brief and legal authority. The PDJ conducted a brief hearing on the motion on May 20, 2013, and ruled that Respondent's citation to diversion agreements and stipulated admissions of misconduct contravened section V-4 of the at-issue conference order in this matter. Accordingly, the PDJ instructed the Hearing Board to disregard those authorities.

During the disciplinary hearing, Respondent, Christopher Henderson, Victoria Peters, and Laurel Herndon testified, and the Hearing Board considered the stipulated facts, stipulated exhibits 1-22, the People's exhibits 26-29, and Respondent's exhibit C. In accordance with the protective order granted on May 16, 2013, the PDJ **SEALS** exhibit 27.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on June 14, 1995, under attorney registration

number 25640.[1] She is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in these disciplinary proceedings.[2]

Initial Meeting and Fee Agreement

Since 2005, when she left a long-standing teaching position at the University of Colorado Law School, Respondent has run a solo law firm in Westminster, where she primarily practices immigration law.[3]

In May 2011, Christopher Henderson ("Henderson") and his wife, Victoria Peters, a/k/a Victoria Henderson ("Peters"),[4] retained Respondent.[5] Henderson, a U.S. citizen by birth, previously married Carmen Sanchez, a Dominican Republic national, in 1996.[6] Although U.S. Citizenship and Immigration Services ("USCIS") determined that the marriage was a sham, Henderson and Sanchez did not terminate or annul their marriage.[7]

Nevertheless, in 2004 Henderson married Peters, a Trinidad and Tobago national who had entered the United States on a visitor's visa four years earlier.[8] Henderson filed an I-130 "Petition for Alien Relative" in 2004, seeking to have Peters classified as his spouse so she could become a lawful permanent resident.[9] In the petition, Henderson did not disclose his sham marriage to Sanchez.[10] After conducting interviews and a site visit, USCIS determined that Peters and Henderson had married solely in order to obtain lawful status for Peters.[11] Accordingly, USCIS initiated removal proceedings against her.[12]

Peters and Henderson met with Respondent to discuss the removal case on May 23, 2011, a week before Peters's first appearance before the court at a master calendar hearing.[13] They paid Respondent a $100.00 consultation fee.[14] At the meeting, Respondent advised them that Peters had no relief available other than voluntary departure. Respondent explained, however, that if Henderson filed a second I-130 petition on Peters's behalf, the immigration

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[1] Respondent's registered business address is 8671 Wolff Court, #260, Westminster, Colorado 80031.
[2] *See* C.R.C.P. 251.1(b).
[3] She previously worked for two state attorneys general, a legal assistance foundation, and the Southern Methodist University Law School.
[4] Victoria Peters testified that it is appropriate to refer to her by the last name of Peters.
[5] Stip. Facts ¶ 2.
[6] Stip. Facts ¶¶ 3, 5.
[7] Stip. Facts ¶¶ 6-7.
[8] Stip. Facts ¶ 3.
[9] Stip. Ex. 3.
[10] Stip. Facts ¶¶ 5-6.
[11] Stip. Facts ¶ 9; Stip. Ex. 3.
[12] Stip. Ex. 2. These proceedings were held before the immigration court in Denver, which is administered by the U.S. Department of Justice Executive Office for Immigration Review.
[13] Stip. Facts ¶¶ 4, 10.
[14] Stip. Facts ¶ 10; Stip. Ex. 6.

court would stay the removal case until adjudication of the petition. Respondent also said that Henderson could not file the I-130 petition until his marriage to Sanchez had been terminated or annulled. At the disciplinary hearing, Respondent testified that she was particularly concerned about this aspect of the case because Henderson said he had been unable to serve Sanchez when he previously filed for annulment. Respondent also advised Peters and Henderson to begin gathering evidence, such as leases, bank accounts, and letters from friends, showing they were in a bona fide marriage.

During the meeting, Respondent showed Peters and Henderson a list of her standard legal fees for various immigration-related services.[15] The fee list indicated that she charged an hourly rate of $250.00 for "miscellaneous immigration and consumer rights cases."[16] Although Respondent testified her normal rate for cases like Peters's was $5,000.00, she offered to represent Peters for a flat fee of $3,550.00, which included $50.00 for photocopying and postage.

The next day, Respondent sent Peters and Henderson a fee agreement, which they signed on May 25, 2011.[17] The fee agreement reiterated the legal advice Respondent had given them at their meeting and provided that, for her $3,550.00 fee, she would represent Peters before the immigration court, assist the couple in preparing a second I-130 petition, and accompany Peters to her interview with USCIS.[18] An initial payment of $2,000.00 was due by May 27, 2011, and the remaining balance was due in five payments, with $350.00 due by June 27, 2011, and $300.00 due by the twenty-seventh day of the next four months.[19]

The fee list Respondent had shown Peters and Henderson at their meeting was not part of the written fee agreement. The fee agreement also did not explain what payment, if any, would be due if the representation ended before Respondent completed all three tasks she agreed to perform. Peters and Henderson both recall Respondent saying she would not begin any legal work for them until she received the full $3,550.00 fee. Respondent denies making any such statement, however, and Peters's and Henderson's testimony was inconsistent with their statements that they expected Respondent to represent Peters at the master calendar hearing in late May 2011.

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[15] *See* Stip. Ex. 4.
[16] Stip. Ex. 4.
[17] Stip. Facts ¶ 11; Stip. Ex. 5. For purposes of this opinion, we assume that Henderson, in addition to Peters, was Respondent's client.
[18] Stip. Ex. 5.
[19] Stip. Ex. 5.

Legal Services and Communication

Respondent appeared in immigration court for Peters's master calendar hearing on May 31, 2011, before a judge who Respondent believes respects her. She moved for a continuance to buy time for preparation of the second I-130 petition. Respondent testified that counsel for USCIS could have raised a well-grounded objection to a continuance but did not do so. The court reset the hearing for March 2012. Although the hearing was brief, several matters were set at the same time, so Respondent was at the courthouse for about an hour, which included a short meeting with her clients after the hearing.

Little happened in Peters's immigration case over the summer of 2011. Respondent sent Peters a short letter on June 8, 2011, enclosing notice of the March 2012 hearing and asking for updates about the status of Henderson's annulment case.[20] Respondent also spent forty minutes researching annulment and marriage fraud issues in June.[21] In late June, and once again in late July, Respondent wrote brief letters to Peters, asking whether Henderson had found a lawyer to handle the annulment case and reminding Peters of the next payment due.[22] Peters and Henderson did not respond to Respondent's queries about the annulment case.

In August, Respondent spoke with Peters about scheduling a meeting, explaining that she wanted to begin preparing the second I-130 petition and reviewing evidence that would demonstrate the bona fides of the marriage. Peters told Respondent that she and her husband would only be available to meet on a Saturday, so a meeting was scheduled for Saturday, August 20, 2011, and Respondent spent fifteen minutes reviewing the I-130 petition and researching how to establish a bona fide marriage just before the meeting.[23] Peters and Henderson did not show up for the meeting, however. Respondent wrote to them two days later, asking them to call in the future if they could not keep an appointment and reminding them of their upcoming payment.[24] Peters apologized in a letter, saying a family emergency required Henderson to travel out of state and they would contact Respondent to set another meeting once he returned to Colorado.[25] Peters and Henderson contend that over the next two months they were unable to reach Respondent, but Respondent disagrees, claiming her clients were the unresponsive party. We find Respondent's testimony on this point more credible.

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[20] Stip. Ex. 8.
[21] Stip. Ex. 1.
[22] Stip. Exs. 9 & 11.
[23] Stip. Ex. 1.
[24] Stip. Ex. 12.
[25] Stip. Ex. 13.

Payment and Consumption of Fees

Peters and Henderson paid Respondent $2,000.00 on May 27, 2011.[26] They paid the first installment of $350.00 one day late, on June 28, 2011, and sent the next installment of $300.00 five days late, on August 1, 2011.[27] They timely paid the third installment of $300.00 but then discontinued making payments.[28] In total, they paid Respondent $2,950.00 toward her flat fee.[29]

During the representation, Respondent maintained three accounts at Valley Bank & Trust: a business checking account, a COLTAF trust account,[30] and a personal checking account.[31] Between May and December 2011, Respondent essentially did not use her personal account. Its starting balance was $6.47, and after a $5.00 debit, its ending balance was $1.47.[32] Respondent did not at any time during her representation of Peters and Henderson keep their fees in her trust account.[33]

Instead, Respondent used her business account as her primary bank account. On May 25, 2011, just after her first meeting with Peters and Henderson, the business account balance was $284.02.[34] Respondent deposited the $2,100.00 they had paid her on May 27, 2011, which raised the account balance to $2,384.02.[35] Six days later, an automatic debit of $1,653.31 for her home mortgage and a $400.00 check to the U.S. Treasury reduced the balance to $330.71.[36] Respondent had not earned the legal fees consumed by these payments.

After Respondent deposited Peters and Henderson's $350.00 installment on June 29, 2011, the account balance was $168.60.[37] According to

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[26] Stip. Facts ¶ 14; Stip. Ex. 7. At the hearing, Henderson characterized all funds paid to Respondent as his own money, not the couple's shared money.
[27] Stip. Facts ¶ 19.
[28] Stip. Facts ¶ 19.
[29] Stip. Facts ¶ 20.
[30] A COLTAF (Colorado Lawyer Trust Account Foundation) account is an interest-bearing account for certain client funds. The interest on lawyers' COLTAF accounts is used to support access to civil justice in Colorado. *See* Colo. RPC 1.15(h).
[31] Ex. 27 at 214.
[32] Ex. 27 at 247-55.
[33] The People sought to admit Respondent's trust account records to show that she also failed to place other clients' fees in that account. Respondent objected under CRE 404(b), arguing that the People were improperly seeking to demonstrate that she had acted in conformity with a character trait. The PDJ ruled in Respondent's favor, finding it unnecessary to review the trust records, given that the People had not charged Respondent with misconduct relating to other clients and Respondent had already admitted she did not place Peters and Henderson's funds in her trust account. The PDJ overruled Respondent's objection to admitting her personal account records, however, finding them relevant to her state of mind.
[34] Ex. 27 at 259.
[35] Ex. 27 at 259.
[36] Ex. 27 at 264-66.
[37] Ex. 27 at 266.

Respondent's own accounting, she had performed no more than two-and-a-half hours of work on Peters's case by this date.[38]

For most of July 2011, the account had a negative balance, and Respondent was charged several hundred dollars in overdraft and insufficient funds fees.[39] The next month, the account was operating in the black, with an average ledger of $1,273.00.[40] When Peters and Henderson paid Respondent $300.00 on August 1, 2011, Respondent's account had a balance of $751.27.[41] For the remaining months of 2011, the account had average ledgers of $1,521.00, $944.00, $1,062.00, and $2,524.00, respectively, although the account carried a negative balance for a few days in November.[42]

After June 2011, Respondent ceased making automatic mortgage payments at the start of each month.[43] Although she began discussing loan modification with her bank sometime that year, the bank filed foreclosure proceedings against her in late 2011. Those proceedings were dismissed the following summer.

Respondent testified that in addition to the three accounts discussed above, she had a retirement account with about $21,000.00. She said she could have used money from that account to refund her clients, if needed, though to do so she would have had to withdraw a minimum of $5,000.00.

According to Respondent, she failed to monitor her bank account during her representation of Peters and Henderson because of family-related problems. During that period, her eighty-year-old mother in Chicago had to be hospitalized after becoming emaciated and ill; in addition, a so-called handyman had moved into her mother's house against her mother's will and refused to leave. In light of these problems, Respondent moved her mother to Colorado, which required significant time and resources. In addition, Respondent's teenage daughter was experiencing serious behavioral and emotional difficulties, such as running away from home and lashing out at teachers and Respondent.

Termination of Representation and Refund of Fees

At the disciplinary hearing, Henderson testified he was upset both that Respondent had sent him and Peters "demand letters" reminding them of their upcoming payments and that she had asked about the status of his annulment, since he had not hired her to work on that case. Both parties

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[38] Stip. Ex. 1.
[39] Ex. 27 at 271-72.
[40] Ex. 27 at 274.
[41] Ex. 27 at 276.
[42] Ex. 27 at 279-96.
[43] Ex. 27 at 271-96.

agree that the attorney-client relationship broke down on November 15, 2011, when Respondent and Henderson spoke by phone. In that conversation, Henderson told Respondent he did not trust lawyers, and Respondent suggested that she withdraw from the representation if he did not trust her.

Later that same day, Peters emailed Respondent to officially terminate the representation.[44] Peters asserted that Respondent was entitled to a legal fee for only one hour of work, reflecting Respondent's appearance at the hearing on May 31, 2011.[45] Peters asked that Respondent inform them of her hourly charge and refund the remaining portion of their flat fee within three days.[46] The bottom of the email bore a "confidentiality footer," indicating that legal advice in the message was "solely for the benefit of the Moore, Schulman & Moore, APC client(s)."[47]

Respondent wrote to Peters on November 19, 2011, saying she was moving to withdraw from the case and would review the file to calculate the refund due after her motion was granted.[48] Peters emailed Respondent on December 7, 2011, saying she and Henderson would take action against Respondent if she did not return their money within two days; in reply, Respondent reiterated that she would determine the amount of refund owed after the immigration judge granted her motion to withdraw.[49] Henderson responded in a voicemail, threatening to file grand larceny charges. Peters and her mother also visited Respondent's office, accompanied by Westminster police officers, in an effort to reclaim Peters and Henderson's legal fees, but Respondent was not there at the time.

On the day after Christmas, Peters forwarded to Respondent a copy of the immigration judge's order granting her motion to withdraw, again asking for a refund of attorney's fees.[50] Four days later, on December 30, 2011, Respondent sent Peters and Henderson money orders, along with a letter explaining the refund:

> Enclosed please find a refund in the amount of $1,835.86 which represents the unearned portion of my legal fee and costs. I spent 4.41 hours, billed at an hourly rate of $250. From the $2,950 you paid, I am deducting $1,102.50 for my attorney time on your case

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[44] Stip. Ex. 15.
[45] Stip. Ex. 15.
[46] Stip. Ex. 15.
[47] Stip. Ex. 15. This firm appears to be based in San Diego, California. Henderson and Peters did not explain the presence of this footer, but they testified that they had not in fact consulted with other counsel regarding this fee dispute.
[48] Stip. Ex. 16.
[49] Stip. Ex. 17.
[50] The immigration court mailed the notice on December 19, 2011. Respondent testified that she was out of the office in the days leading up to Christmas, so she first saw the notice when Peters forwarded it.

consisting of research, correspondence, motion to withdraw, travel time, court appearance and $11.64 for postage and photocopying charges for a total of $1,114.14.

I wish you the best in your immigration court case.[51]

On January 1, 2012, Peters emailed Respondent, disputing her decision to keep $1,114.14 in fees and requesting a detailed accounting.[52] Respondent did not respond. She testified that she believed she had already provided the required accounting and that she was still "reeling" from Henderson's threatening voicemail and therefore felt it best to minimize contact with her former clients.

Peters and Henderson then filed a request for investigation with the People. On March 19, 2012, Respondent sent the People a handwritten log titled "Description of Work Performed," asserting that she had expended 5.166 hours in representing Peters and Henderson and listing her legal services, the dates of those services, and the amount of time she spent performing those services.[53] The log indicates that Respondent spent ninety minutes at the master calendar hearing (sixty minutes of travel time and thirty minutes of court time), forty minutes on legal research in June 2011, fifteen minutes preparing for the meeting scheduled for August 20, 2011, and about thirty increments of five minutes each on letters, emails, and calls to Peters and Henderson.[54] The total time reflected in the log is 5.166 hours, but Respondent only had billed her clients for 4.41 hours.[55] On February 11, 2013, Respondent sent Peters and Henderson a check for $1,114.14—representing a full refund of her flat fee.[56]

Colo. RPC 1.15(a), 1.15(c), and 1.5(f)

Respondent admits to two of the People's claims: violation of Colo. RPC 1.15(a) and 1.15(c). Colo. RPC 1.15(a) requires a lawyer to hold client property in a trust account, separate from the lawyer's own property. Respondent failed to keep Peters and Henderson's unearned fees in a trust account and negligently converted their funds in contravention of Colo. RPC 1.15(a).[57] Similarly, Colo. RPC 1.15(c) mandates that a lawyer keep property in which two or more persons claim an interest separate from the lawyer's own property until there is an accounting and severance of the

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[51] Stip. Exs. 19-20.
[52] Stip. Facts ¶¶ 28-29.
[53] A typed version of that log appears as stipulated exhibit 1.
[54] Stip. Ex. 1
[55] This discrepancy is not fully explained.
[56] Stip. Ex. 22.
[57] A lawyer does not earn advance fees upon receipt; rather, "an attorney earns fees only by conferring a benefit on or performing a legal service for the client." *In re Sather*, 3 P.3d 403, 410 (Colo. 2000); *see also* Colo. RPC 1.5(f).

interests. Respondent placed Peters and Henderson's funds in her own business account without providing any accounting to them. She thereby violated Colo. RPC 1.15(c).

Respondent did not directly admit at the disciplinary hearing that she violated Colo. RPC 1.5(f), but we find she did so. Colo. RPC 1.5(f) states that a lawyer does not earn fees "until the lawyer confers a benefit on the client or performs a legal service for the client"; it also notes that advances of unearned fees belong to the client and must be deposited in the lawyer's trust account until earned. Respondent admitted that she immediately placed Peters and Henderson's fees into her business account, not her trust account. The evidence also makes clear that she had not earned all of the fees upon receipt, when she deposited them in her business account and began using them for her own purposes. As such, the Hearing Board concludes that Respondent violated Colo. RPC 1.5(f).

The People's remaining three claims—Colo. RPC 1.15(b), 1.16(d), and 8.4(c)—require more in-depth analyses. We begin with Colo. RPC 1.15(b).

Colo. RPC 1.15(b)

Colo. RPC 1.15(b) requires lawyers to "promptly," upon a client's request, "render a full accounting" regarding funds in which the client has an interest. The People allege Respondent violated this rule because she provided an inadequate accounting to Peters and Henderson on December 30, 2011, and because she did not respond to Peters's subsequent request for a detailed accounting.

Neither Colo. RPC 1.15(b) nor the comments to the rule elucidate the phrase "full accounting." Colorado case law makes clear that a lawyer violates Colo. RPC 1.15(b) by failing outright to provide any form of accounting to a client upon request, or by accounting for only a portion of a client's funds.[58] However, there is little guidance about minimum standards for a full accounting in Colorado and in other jurisdictions with analogous rules.[59]

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[58] *See, e.g., In re Stevenson*, 979 P.2d 1043, 1044 (Colo. 1999) (holding that lawyer violated Colo. RPC 1.15(b) by entirely failing to render an accounting); *People v. Fager*, 925 P.2d 280, 282 (Colo. 1996) (finding that lawyer violated Colo. RPC 1.15(b) when he did not account for the full balance of client funds). Along similar lines, an accounting for only a limited span of the representation is not a "full accounting." *See In re Disciplinary Proceedings against Brown*, 787 N.W.2d 800, 805-06 (Wis. 2010) (holding that lawyer violated analogue to Colo. RPC 1.15(b) by providing billing statements covering only a portion of the representation).

[59] David R. Yates, Commentary, *Accounting of Funds: What Do Lawyers Owe Their Clients?*, 25 J. Legal Prof. 255, 260-61 (2001) (stating that "a lawyer has almost complete discretion, under Rule 1.15, as to the amount of detail the accounting . . . will provide" and that "[m]ost states simply do not give any guidance as to the amount of detail required by their equivalent to Rule 1.15").

The Hearing Board concludes that the letter Respondent sent Peters and Henderson on December 30, 2011, satisfied Colo. RPC 1.15(b). The letter identified (1) Respondent's hourly rate, (2) the number of hours she worked on the case, (3) the five activities she spent her time on, and (4) her postage and photocopying charges. No time period was omitted, and no portion of the flat fee was left unexplained. It would have been better practice for Respondent to have included more details about when she earned fees and the type of legal research she performed, as she later did in her "Description of Work Performed" ("Immigration Marriage Fraud research" and "Research/bona fide marriage proof").[60] But we cannot hold Respondent to those ideals in light of the lack of specificity in the legal authorities and the clear and convincing standard of evidence in this proceeding.

We also find that Respondent rendered her accounting "promptly" within the meaning of Colo. RPC 1.15(b). The immigration court mailed the order granting Respondent's motion to withdraw on December 19, 2011, and eleven days later—just four days after she received a copy of the order from Peters—Respondent sent her clients the accounting. We believe she acted within a reasonable timeframe, particularly in light of the intervening holiday.

Finally, the People suggest that Peters's request for a detailed accounting on January 1, 2012, triggered an obligation for Respondent to provide a more extensive accounting than that which she had already provided. We disagree. To accept the People's argument would effectively transform clients into the arbiters of legally satisfactory accountings under Colo. RPC 1.15(b). If a lawyer has provided an accounting that meets the applicable legal standards—as we find Respondent did here—a client cannot effectively impose stricter professional obligations upon the lawyer simply by asking for additional detail.

Colo. RPC 1.16(d)

Colo. RPC 1.16(d) provides that, "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest," including "refunding any advance payment of fee or expense that has not been earned or incurred." The People assert Respondent should have refunded Peters and Henderson's entire legal fee in November 2011, upon her discharge.

As an initial matter, the Hearing Board disagrees with the People's position that any refund was due immediately upon Respondent's receipt of Peters's email discharging her. It is not "reasonably practicable" for a lawyer to refund unearned fees when a court might deny the lawyer's motion to withdraw and instead order the lawyer to complete the full scope of legal services initially agreed upon. Until a court grants a lawyer's motion to withdraw, the lawyer

[60] Stip. Ex. 1.

remains as counsel for the client, and the representation has not officially ended.[61] Courts generally do not take long to rule on motions to withdraw, so a lawyer will not unreasonably delay a client's receipt of unearned fees by waiting to forward those funds until the lawyer has received permission to withdraw. We find Respondent timely refunded her unearned fees.[62]

The more difficult question presented here is whether Respondent properly retained the $1,114.14 she believes she earned in legal fees and costs until February 11, 2013, when she ultimately refunded that sum to Peters and Henderson. In the People's view, Respondent's failure to include in her fee agreement benchmarks or milestones indicating when she would earn her legal fees precluded her from keeping any fees, because she did not complete the three tasks she had pledged to perform. In support, the People look to comment 11 to Colo. RPC 1.5, the rule governing fees and fee agreements:

> To make a determination of when an advance fee is earned, the written statement of the basis or rate of the fee, when required by Rule 1.5(b),[63] should include a description of the benefit or service that justifies the lawyer's earning the fee, the amount of the advance unearned fee, as well as a statement describing when the fee is earned. Whether a lawyer has conferred a sufficient benefit to earn a portion of the advance fee will depend on the circumstances of the particular case. The circumstances under which a fee is earned should be evaluated under an objective standard of reasonableness.

This comment provides sensible guidance, but it does not explicate Colo. RPC 1.16(d) itself, after all, and it uses the non-mandatory term "should" rather than "shall" or "must." Moreover, the Colorado Supreme Court suggested in *In re Sather* that it is appropriate for a lawyer to draw upon an

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[61] *See* Colo. RPC 1.16(c) ("When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation."); 8 C.F.R. § 1003.17(b) (providing that a lawyer may not withdraw from an immigration court case until a judge grants the lawyer's motion to withdraw); U.S. Department of Justice Executive Office for Immigration Review, *Immigration Court Practice Manual* § 2.3(i)(ii)-(iii) (2013) (indicating that a lawyer who wishes to withdraw remains counsel of record until the court grants a motion to withdraw, and that a lawyer who has been discharged by the client remains attorney of record until the court grants a motion for substitution of counsel or a motion to withdraw).

[62] By contrast, in *In re Sather*, 3 P.3d at 415, the Colorado Supreme Court held that a lawyer violated Colo. RPC 1.16(d) by only partially repaying the client's retainer three months after his discharge and paying the remainder five months after his discharge, while in *People v. Sigley*, 917 P.2d 1253, 1254 (Colo. 1996), a lawyer violated Colo. RPC 1.16(d) by waiting more than seven months after his discharge to return unearned funds.

[63] Respondent was required by Colo. RPC 1.5(b) to provide a written fee agreement in this case because she had not previously represented Peters and Henderson.

advance fee using either milestones *or* hours worked to measure the fee earned.[64]

Respondent insists that she was entitled to recover on a quantum meruit basis for representing Peters in immigration court—one of the three tasks outlined in her fee agreement—and that she therefore did not violate Colo. RPC 1.16(d) by keeping a portion of her fee. Quantum meruit, also known as unjust enrichment, is an equitable theory that permits a party to recover the reasonable value of services provided if the parties either do not have a contract or if that contract has been abrogated.[65] "To recover in quantum meruit, a plaintiff must demonstrate that (1) at plaintiff's expense, (2) defendant received a benefit, (3) under circumstances that would make it unjust for the defendant to retain the benefit without paying."[66] To determine whether retention of the benefit is unjust, courts examine the parties' intentions, expectations, and behavior.[67] Application of this doctrine "does not depend upon the existence of a contract."[68]

In the context of flat fee agreements, the Colorado Supreme Court has recognized time and again that "[u]pon discharge, . . . [an] attorney may be entitled to quantum meruit recovery for the services that the attorney rendered and for costs incurred on behalf of the client."[69] Jurisdictions across the country likewise have recognized that lawyers may recover the reasonable value of services they performed under a flat fee agreement if they are discharged, without fault on their part, before completing the representation.[70]

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[64] 3 P.3d at 411 ("Often, attorneys collect a certain amount from the client in advance of any work and deduct from that amount according to the hours worked or mutually agreed-upon 'milestones' reached during representation.").

[65] *Melat, Pressman & Higbie v. Hannon Law Firm*, 287 P.3d 842, 847 (Colo. 2012).

[66] *Id.*

[67] *Id.*

[68] *Dudding v. Norton Frickey & Assocs.*, 11 P.3d 441, 444 (Colo. 2000).

[69] *In re Sather*, 3 P.3d at 409-10; *see also Melat*, 287 P.3d at 847; *Mullens v. Hansel-Henderson*, 65 P.3d 992, 999 (Colo. 2002); *Dudding*, 11 P.3d at 445; *Olsen & Brown v. City of Englewood*, 889 P.2d 673, 675 (Colo. 1995). Under contingency fee agreements, by contrast, a Colorado lawyer is not entitled to recover fees in quantum meruit when the agreed-upon services are not completed and the fee agreement does not notify the client of the possibility of such recovery. *Mullens*, 65 P.3d at 995-97 (observing that C.R.C.P. Ch. 23.3 Rule 5 requires contingency fee agreements to include "a statement of the contingency upon which the client is liable to pay compensation otherwise than from amounts collected for him by the attorney" and that clients in contingency fee agreements do not normally expect to pay any legal fees before full completion of legal services).

[70] 7 Am. Jur. 2d Attorneys at Law § 280; *see also* Restatement (Third) of Law Governing Lawyers § 39 (2000) (stating that a lawyer is entitled to recover a fair fee in quantum meruit for legal services provided to a client when the parties have abrogated their fee agreement); *Somuah v. Flachs*, 721 A.2d 680, 688 (Md. App. 1998) ("the trend in other jurisdictions is generally to permit an attorney discharged by a dissatisfied client to recover compensation in quantum meruit from the client for services rendered prior to discharge").

In *People v. Johnson*, a case involving the precursor to Colo. RPC 1.16(d), the Colorado Supreme Court applied the principle of quantum meruit to determine the share of an advance fee a lawyer was entitled to retain upon termination of representation.[71] In that case, a lawyer received a retainer of $1,500.00 in a criminal defense matter, but he did not specifically agree with his client as to the fees he could retain if the client prematurely terminated his services.[72] According to the Colorado Supreme Court, the lawyer's fee arrangement therefore "by necessity was upon a quantum meruit basis."[73] After just ten days, the client discharged the lawyer, and the lawyer did not refund any of the advance fee.[74] Since the evidence showed the lawyer had spent about eight or nine hours on the case and had incurred about $50.00 in expenses, the Colorado Supreme Court ruled that the lawyer was "entitled on a quantum meruit basis" to $500.00 but was obligated to refund the remaining portion of the retainer.[75]

We now examine whether the three required elements for quantum meruit recovery are present here.[76] The first requirement is easily met, as Respondent unquestionably provided legal services at her own expense. Second, Peters faced removal if her master calendar hearing were not continued, a risk that was diminished by Respondent's preparation, presence, and relationship with the judge. Respondent also provided legal advice about Peters's case. As such, the evidence shows that Peters received a benefit from Respondent.

Third, we consider the parties' intentions, expectations, and behavior to determine whether it would be unjust for Peters to retain the benefit of legal services without paying. Despite Peters's and Henderson's testimony to the contrary, they clearly understood—and in fact expected—that Respondent would immediately begin work on Peters's case, including by attending the master calendar hearing on May 31, 2011. Indeed, in her email of November 15, 2011, Peters acknowledged that Respondent was entitled to a legal fee for appearing at the hearing, although Peters assumed that Respondent spent just an hour there.[77] While Peters and Henderson may not have realized that Respondent had performed some legal research on the case, it was entirely reasonable for Respondent to have done so and to have billed

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[71] 199 Colo. 248, 250-51, 612 P.2d 1097, 1099 (1980) (ruling that lawyer violated DR-2-110(A)(3), which required a prompt refund of unearned fees upon withdrawal from representation).
[72] *Id.* at 249, 612 P.2d at 1098.
[73] *Id.*
[74] *Id.* at 249, 612 P.2d at 1098-99.
[75] *Id.* at 250, 612 P.2d at 1099. For purposes of calculating this sum, the Colorado Supreme Court accepted the lawyer's testimony that his hourly fee was $50.00. *Id.* at 250, 612 P.2d at 1098-99.
[76] *See Melat*, 287 P.3d at 847.
[77] Stip. Ex. 15.

her clients for the various five-minute increments of time she spent communicating with them.[78] In light of these circumstances, we find it would be unjust for Peters to benefit from Respondent's legal services without paying.

We must also consider whether Respondent's misconduct bars recovery in quantum meruit here. The Colorado Supreme Court has indicated that a lawyer may forfeit his or her right to recover in quantum meruit if the lawyer abandons the client's case or engages in other serious misconduct.[79] The Restatement of Law Governing Lawyers identifies the following standards for forfeiture:

> A lawyer engaging in [a] clear and serious violation of [a] duty to a client may be required to forfeit some or all of the lawyer's compensation for the matter. Considerations relevant to the question of forfeiture include the gravity and timing of the violation, its willfulness, its effect on the value of the lawyer's work for the client, any other threatened or actual harm to the client, and the adequacy of other remedies.[80]

Forfeiture has been deemed appropriate in cases where a lawyer represented a client despite a conflict of interest, where a lawyer coerced a client, and where a lawyer practiced law in a state where not admitted.[81] But the Restatement indicates that a lawyer who fails to keep a client's funds segregated, yet ultimately preserves the client's funds, should not be forced to forfeit fees.[82]

The Hearing Board finds that Respondent's misconduct here did not bar her from retaining some fees in quantum meruit.[83] As discussed in the next

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[78] We note that Respondent's letters to her clients not only notified them of their upcoming payments but also inquired about the status of the annulment matter, on which Peters's immigration case depended. Further, it was not unreasonable for Respondent to remind them of upcoming payments, given that their June and July payments were late. We also observe that Respondent did not charge her clients for all of her legal services, such as explaining the status of Peters's case in the fee agreement and preparing for the master calendar hearing.

[79] *Dudding*, 11 P.3d at 448 (citing *Somuah*, 721 A.2d at 688 (stating that a lawyer who has engaged in serious misconduct may not be entitled to recover a fee); *Int'l Materials Corp. v. Sun Corp.*, 824 S.W.2d 890, 894 (Mo. 1992) (finding that a lawyer who abandons a contract is not entitled to recover in quantum meruit); *White v. McBride*, 937 S.W.2d 796, 803 (Tenn. 1996) (holding that a lawyer who charges a grossly excessive fee cannot recover in quantum meruit, since such misconduct is "an ethical transgression of a most flagrant sort" and recovery "would encourage attorneys to enter exorbitant fee contracts, secure that the safety net of quantum meruit is there in case of a subsequent fall")).

[80] Restatement (Third) of Law Governing Lawyers § 37 (2000).

[81] *Id.* (citing, *inter alia*, *Crawford & Lewis v. Boatmen's Trust Co.*, 1 S.W.3d 417 (Ark. 1999); *Jackson v. Griffith*, 421 So.2d 677 (Fla. App. 1982); *Ranta v. McCarney*, 391 N.W.2d 161 (N.D. 1986)).

[82] *Id.*

[83] Some courts have only allowed a lawyer to recover in quantum meruit if the lawyer was discharged without cause. *See Dudding*, 11 P.3d at 448. Here, Peters and Henderson did not

section, we do not find that Respondent engaged in knowing conversion. And although she violated Colo. RPC 1.15(a), 1.15(c), and 1.5(f), her misconduct was not willful, it did not vitiate the value of her legal services, and her clients were made whole. In keeping with the Restatement's approach and relevant case law, we find she did not forfeit her right to recover in quantum meruit. Accordingly, Respondent did not violate Colo. RPC 1.16(d); by retaining the portion of her fee she believed she had earned under her standard hourly fee, she was acting in accordance with the prevailing legal authorities.

Colo. RPC 8.4(c)

The People's final claim is that Respondent engaged in knowing conversion when she deposited her clients' unearned fees into her business account and then used the fees for personal expenses without her clients' authorization. Through these actions, the People allege Respondent violated Colo. RPC 8.4(c), which proscribes conduct involving dishonesty, fraud, deceit, or misrepresentation.

To succeed on their claim, the People need not show that Respondent meant to permanently deprive her clients of their funds.[84] Instead, they must only demonstrate that Respondent knowingly took her clients' funds without authorization.[85] To illustrate, "using client funds for personal use without the client's permission by writing a check on a trust account that the lawyer knows contains only client funds would be a knowing conversion of client funds, whether or not the lawyer intended to eventually replace the funds."[86] By contrast, "depositing client funds into a trust account with a negative balance, if done only negligently, would be a technical rather than knowing conversion of client funds."[87]

The People contend Respondent knowingly converted Peters and Henderson's funds because she immediately deposited their fees into her business account and used them for personal expenses on successive occasions. Respondent, on the other hand, maintains that she acted negligently; she was distracted by her mother's failing health and her daughter's behavioral problems and was not minding her bank accounts.

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discharge Respondent because she was commingling their funds or for any other fault on her part. Instead, it appears they discharged her because she inquired about Henderson's annulment case, sent what he characterized—unreasonably, in our view—as "demand letters," and engaged in a somewhat heated discussion with Henderson. Peters also said she was unhappy that Respondent was "holding her hostage" by refusing to perform work without full payment of her fee, but we do not find her testimony credible in light of the evidence that Respondent in fact attended the master calendar hearing and scheduled the August meeting with her clients, among other work, without having received the full fee.

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

[85] *Id.* at 11.

[86] *Id.*

[87] *Id.*

We must determine whether Respondent knowingly placed unearned funds into her business account without authorization and whether she knowingly used those funds for her own purposes. The evidence shows she did knowingly place unearned fees into her business account without authorization.[88] Even though she testified that she did not realize the fees belonged in her trust account, lawyers are presumed to know the Rules of Professional Conduct.[89] The more difficult inquiry is whether Respondent knew she was using Peters and Henderson's funds for her own purposes. To answer this question, we examine Respondent's bank records.

As detailed above, Respondent's business account balance was $284.02 on May 25, 2011, just after her first meeting with Peters and Henderson.[90] When she deposited their $2,100.00 payment two days later, the balance reached $2,384.02.[91] Six days later, an automatic debit of $1,653.31 for her home mortgage and a $400.00 check to the U.S. Treasury reduced the balance to $330.71.[92] This resulted in at least a technical conversion of client funds, since Respondent had earned only a small portion of her flat fee. Throughout the month of June, Respondent made several deposits while also incurring debits for insurance and telephone bills, among other expenses. Since Respondent's accounting reflects that she had earned just $625.00 by the end of June, yet her account balance was only $168.60 on June 29, 2011, Respondent effectively consumed her clients' funds throughout that month.

There were no automatic debits for Respondent's home mortgage in July or the remainder of 2011. In July, Respondent's account was in overdraft for most of the month, and she was charged several hundred dollars in overdraft and insufficient funds fees. During that month, she effectively continued to use unearned fees belonging to Peters and Henderson, since she only performed fifteen additional minutes of work on their behalf in July.

In August, Respondent's account had an average ledger of $1,273.00. After Peters and Henderson paid her $300.00 on August 1, 2011, the account balance was $751.27. For some portions of the month, the account balance exceeded the unearned portion of Peters and Henderson's fee, while on other dates, the balance was lower than that figure. In September, October, November, and December 2011, the account's average ledgers were $1,521.00, $944.00, $1,062.00, and $2,524.00, respectively, and the account's balance was negative for just a few days in November. As in August, the balance on

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[88] *See In re Sather*, 3 P.3d at 410-11 ("an attorney earns fees only by conferring a benefit on or performing a legal service for the client").
[89] *In re Fisher*, 202 P.3d 1186, 1198 (Colo. 2009) ("All Colorado attorneys are presumed to be aware of the Rules of Professional Conduct and their impact.").
[90] Ex. 27 at 259.
[91] Ex. 27 at 259.
[92] Ex. 27 at 264-66.

some occasions exceeded and on other occasions did not exceed the unearned portion of Peters and Henderson's fee.

Applying the exacting burden of proof here, the Hearing Board does not find that Respondent knowingly consumed her clients' funds in violation of Colo. RPC 8.4(c). Respondent's mortgage payment on June 2, 2011, for instance, was merely an automatic debit. Furthermore, the bank records indicate that Respondent effectively did not monitor or manage her account between May and December 2011. The substantial charges for overdrafts and insufficient funds she incurred strongly suggest her attention was elsewhere. More important, Respondent provided credible testimony that she was preoccupied with family-related concerns during the period at issue and that she does not have an aptitude for business and financial matters. Respondent's testimony regarding her family's circumstances was corroborated by Laurel Herndon, a lawyer who operates a nonprofit immigration organization in Boulder County.

In sum, the testimony and evidence in this matter do not convince us that Respondent realized she was consuming client funds. In fact, aside from Respondent's inappropriate handling of client funds (which we by no means wish to trivialize), we believe her dealings with Peters and Henderson consistently reflected professionalism, loyalty, and respect. We find the People have not proved a violation of Colo. RPC 8.4(c) by clear and convincing evidence.

IV. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) ("ABA *Standards*") and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[93] In imposing a sanction after a finding of lawyer misconduct, the Hearing Board must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the misconduct. These three variables yield a presumptive sanction that may be adjusted in consideration of aggravating and mitigating factors.

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

Duty: By violating Colo. RPC 1.15(a), 1.15(c), and 1.5(f), Respondent violated a duty to her clients to safeguard their property.[94]

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

[94] *See* ABA *Standard* 4.0. Although Appendix 1 to the ABA *Standards* suggests that violations of Colo. RPC 1.5 represent a breach of a duty owed as a professional under ABA *Standard* 7.0, we find Respondent's misconduct here—which involves the same actions that underlie her violations of Colo. RPC 1.15(a) and 1.15(c)—is more properly considered as a breach of her duty to her clients under ABA *Standard* 4.0.

Mental State: Respondent's state of mind cannot be characterized as negligent, because she did more than fail to "heed a substantial risk that circumstances exist or that a result will follow," to borrow from the ABA *Standards*' definition of negligence.[95] She bears a greater degree of responsibility for her misconduct than a merely negligent lawyer would, because she did not heed her professional obligations to familiarize herself with and scrupulously follow the Rules of Professional Conduct. At the same time, we do not believe that she was fully conscious of her conduct or that she was aware she was shirking her ethical duties. We thus find Respondent should have known she was improperly handling her clients' funds.

Injury: There is no evidence that Respondent's misconduct caused her clients actual harm. But a lawyer causes a client possible injury by commingling client funds with the lawyer's own funds; to do so creates a risk that the lawyer's creditors will gain access to the client's funds or that the lawyer will misuse the funds.[96]

ABA *Standards* 4.0-7.0 – Presumptive Sanction

ABA *Standard* 4.12 provides that suspension is generally warranted when a lawyer knows or should know he or she is dealing improperly with client property, thereby causing injury or potential injury to the client. ABA *Standard* 4.12 is commonly applied to "lawyers who commingle client funds with their own."[97] Public censure, by contrast, is called for where lawyers are merely negligent in mishandling client property, such as by failing to follow their own established procedures or neglecting to train office staff to properly handle client funds.[98]

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances are any considerations that may justify an increase in the degree of the presumptive sanction to be imposed, while mitigating circumstances may justify a reduction in the severity of the sanction.[99] The Hearing Board considers below evidence of the aggravating and mitigating factors the parties have asked us to apply in this case.

Dishonest or Selfish Motive – 9.22(b): The People argue that Respondent was experiencing financial difficulties at the time of her misconduct, and that she took money from her clients to alleviate those pressures. But we find that Respondent's conduct did not reflect an attempt to benefit herself at her clients' expense, and we therefore do not weigh this factor in aggravation.

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[95] ABA *Standards* § III at 9.
[96] *See In re Sather*, 3 P.3d at 409; *People v. Shidler*, 901 P.2d 477, 479 (Colo. 1995).
[97] ABA *Standard* 4.12, commentary.
[98] *Id.*
[99] *See* ABA *Standards* 9.21 & 9.31.

Pattern of Misconduct – 9.22(c): The evidence does not establish that Respondent engaged in a pattern of misconduct here. Although she improperly handled Peters and Henderson's funds for several months, this was a sustained instance of mishandling client funds in one representation, rather than a series of repeated events involving multiple clients.[100]

Multiple Offenses – 9.22(d): Likewise, we do not find that Respondent engaged in multiple offenses here, since her three rule violations all arise out of the same conduct.[101]

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): The People suggest we should consider this factor in aggravation, but we do not find it applicable. Respondent admits she violated Colo. RPC 1.15(a) and 1.15(c). She also testified that she realizes she did not fully understand the Rules of Professional Conduct at the time of her misconduct, she has attended the trust account school sponsored by the People to learn those rules, and she has hired a bookkeeper.

Vulnerability of Victim – 9.22(h): The People argue that because Peters was facing removal from the United States, she and Henderson are vulnerable victims. We do not view them as such. To the contrary, they appear to be savvy consumers of legal services. Peters, who speaks English fluently, has succeeded in staying in the United States since obtaining her visitor's visa in 2000. Moreover, the couple was resourceful, for instance by seeking the assistance of the Westminster police department and by using a law firm's confidentiality footer in an email to Respondent, thereby signaling that they could pursue legal remedies against her.

Substantial Experience in the Practice of Law – 9.22(i): Respondent was admitted to the bar in 1995 and thus qualifies as an experienced practitioner. Therefore, we apply this factor in aggravation.

Absence of Prior Disciplinary Record – 9.32(a): We consider in mitigation that Respondent has not previously been disciplined during her lengthy practice.

Absence of Dishonest or Selfish Motive – 9.32(b): As noted above, we do not find that Respondent acted with dishonest or selfish motives. Nevertheless, we will not consider a lack of such motives as a mitigating factor, because we believe Respondent acted without adequate consideration of the risks her financial mismanagement posed to her clients.

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[100] *See In re Roose*, 69 P.3d at 49 (according no weight to the aggravating factors of a pattern of misconduct or multiple offenses where an attorney's misconduct "actually involved only two separate acts, arising from the same lack of understanding, and the same misguided perception of zealous advocacy, in the same case").

[101] *See id.*

Personal or Emotional Problems – 9.32(c): Respondent and Laurel Herndon testified that Respondent was experiencing difficult personal problems involving her mother's declining health and her teenage daughter's behavioral issues at the time of her misconduct. We believe the emotional strain produced by these circumstances contributed to Respondent's neglect of her professional duties, and we accord substantial weight in mitigation to this factor.

Timely Effort to Make Restitution – 9.32(d): Respondent sent Peters and Henderson a check for $1,114.14—the remaining disputed portion of her flat fee—on February 11, 2013. This payment is a mitigating factor.[102]

Cooperative Attitude Toward Proceedings – 9.32(e): Respondent testified that she believed she cooperated with the People in this matter. The People do not assert Respondent was uncooperative, nor have we seen any such evidence. As such, we apply this factor in mitigation.

Character or Reputation – 9.32(g): Laurel Herndon offered persuasive testimony that Respondent has an excellent reputation within the immigration law bar. Herndon characterized Respondent as one of the most honest people she has ever known, saying she tries to model her own approach to the law after Respondent's.

Respondent also testified to her substantial record of volunteer work. She has provided pro bono services to children in foster care, volunteered at nonprofit citizenship drives, served on a pro bono immigration court committee that seeks to support unrepresented people, assisted a coalition attempting to launch a free immigration clinic in Denver, and volunteered her services to teenage mothers through Hope House of Colorado. She also took on ten to fifteen pro bono clients who otherwise would have lost representation when the University of Colorado Law School closed the immigration clinic she worked for. We consider Respondent's commitment to assisting an underserved community as additional evidence of her good character.

Remorse – 9.32(l): Respondent testified that she regrets her misconduct and the deterioration of her relationship with Peters and Henderson, since she usually gets along well with clients. Her comments, however, indicated that she feels she let herself down, not that she feels remorse for the potential harm her misconduct caused her clients or the blemish it placed upon the profession's reputation. As such, we will apply this factor but give it relatively little weight.

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[102] *See In re Fischer*, 89 P.3d 817, 821 (Colo. 2004) (ruling it the "better policy to allow a good faith effort to make restitution to be considered in mitigation in order both to encourage lawyers to reduce the injuries they have caused and help insure recognition of the wrongfulness of their conduct").

Analysis Under ABA *Standards* and Colorado Case Law

We are aware of the Colorado Supreme Court's directive to exercise our discretion in selecting a sanction by carefully applying the aggravating and mitigating factors.[103] We also acknowledge that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[104] Although prior cases are helpful by way of analogy, appropriate sanctions for a lawyer's misconduct are determined on a case-by-case basis.

In some prior disciplinary cases involving negligent conversion coupled with other misconduct, the Colorado Supreme Court has imposed lengthy suspensions. For instance, in *People v. McGrath*, a lawyer who used client funds for his own purposes and who also neglected a client matter and made a false statement to investigatory authorities was suspended for a year and a day.[105] In *People v. Wechsler*, a lawyer was suspended for a year and a day when he failed to place client funds in a trust account, made misrepresentations regarding the location of the funds, and failed to provide an accounting to a client for nearly a two-year period, among other misconduct, where three mitigating factors and two aggravating factors were present.[106]

Public censure is generally reserved for lawyers who mishandle client funds without actually converting those funds. For instance, in *People v. Woodrum*, the Colorado Supreme Court publicly censured a lawyer who commingled client funds with her own, among other rule violations, but who was not charged with converting the client funds to her own use.[107]

In this case, Respondent's misconduct posed a significant risk to her clients, and we believe a suspension is warranted. However, this case is readily distinguishable from those discussed above, where lengthy suspensions were imposed for the mishandling of client funds coupled with other misconduct.

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[103] *In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *see also In re Fischer*, 89 P.3d at 822 (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).

[104] *In re Rosen*, 198 P.3d at 121.

[105] 780 P.2d 492, 493-94 (Colo. 1989).

[106] 854 P.2d 217, 223 (Colo. 1993); *see also People v. Harding*, 967 P.2d 153, 155 (Colo. 1998) (suspending for a year and a day a lawyer who used client funds for his own purposes, knowingly disobeyed a court order, and engaged in conduct prejudicial to the administration of justice, among other misconduct); *People v. Zimmermann*, 922 P.2d 325, 328 (Colo. 1996) (suspending for a year and a day a lawyer who, for more than three years, "consistently mismanaged his trust account, commingled funds that should have been deposited in either his trust *or* his operating account, improperly used clients' funds to pay for personal, office and client expenses, and made refunds of unused advance attorney fees from unrelated client funds" without authorization; the lawyer also failed to correct his practices after the People warned him to do so).

[107] 911 P.2d 640, 640-41 (Colo. 1996).

Here, Respondent's misconduct did not extend to other types of wrongdoing, and the mitigating factors greatly outweigh the sole aggravating factor.

We conclude a suspension for three months, all stayed upon the successful completion of a six-month period of probation, with conditions, is the appropriate sanction. Probation is fitting here because we find Respondent is unlikely to harm the public and she is both able and eager to conform her practice to professional standards.[108] Although we are encouraged by Respondent's testimony that she has hired a bookkeeper and attended the trust account school sponsored by the People, we believe she would benefit from structured guidance concerning trust account management and other aspects of overseeing her firm's finances. In our assessment, Respondent lacks a grounding in business management skills but is strongly motivated to serve her clients and the profession with distinction. We therefore order her to work with an accounting mentor during her period of probation.

V. CONCLUSION

Respondent commingled her clients' legal fees with her own funds in her business account and withdrew those funds for her personal use. In light of the multiple mitigating factors here, the appropriate sanction is a three-month suspension, all stayed upon the successful completion of a six-month period of probation.

VI. ORDER

The Hearing Board therefore **ORDERS**:

1. **JULIET CAROL GILBERT**, attorney registration number 25640, is **SUSPENDED FOR THREE MONTHS, ALL STAYED** upon the successful completion of a six-month period of probation, with conditions. The **PROBATION SHALL** take effect only upon issuance of an "Order and Notice of Probation."[109]

2. Respondent **SHALL** successfully complete a **SIX-MONTH PERIOD OF PROBATION** subject to the following conditions:

    a. She will commit no further violations of the Colorado Rules of Professional Conduct; and

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[108] *See* C.R.C.P. 251.7(a)(1)-(3).

[109] In general, an order and notice of sanction will issue thirty-five days after a decision is entered pursuant to C.R.C.P. 251.19(b) or (c). In some instances, the order and notice may issue later than thirty-five days by operation of C.R.C.P. 251.27(h), C.R.C.P. 59, or other applicable rules.

b. During her six-month probation, Respondent shall consult monthly with an accounting mentor selected by the People in conjunction with Respondent. The mentoring shall be designed to implement and consistently utilize a system of financial and trust account management practices to minimize the possibility that Respondent's misconduct will reoccur. The mentoring program shall include monthly reviews of Respondent's business and trust accounts. Respondent and the People shall select the accounting mentor and submit a joint monitoring plan for approval by the PDJ **no later than the effective date of the probation**. Also by that date, Respondent shall provide a copy of this opinion to the mentor and execute an authorization for release, requiring the mentor to notify the People if Respondent fails to fully participate in the required mentoring. The mentor shall submit monthly reports to the People and to the PDJ during the period of probation. Respondent shall bear all costs of complying with this condition of probation.

3. Respondent **SHALL** file any post-hearing motion or application for stay pending appeal with the Hearing Board **on or before August 7, 2013**. No extensions of time will be granted. If Respondent files a post-hearing motion or an application for stay pending appeal, the People **SHALL** file any response thereto within seven days, unless otherwise ordered by the PDJ.

4. Respondent **SHALL** pay the costs of these proceedings. The People **SHALL** submit a "Statement of Costs" within fourteen days from the date of this order. Respondent's response to the People's statement, if any, must be filed no later than fourteen days thereafter.

DATED THIS 17th DAY OF July, 2013.

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

W. ERIC KUHN
HEARING BOARD MEMBER

B. LAWRENCE THEIS
HEARING BOARD MEMBER

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Colorado Supreme Court

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:
JULIET CAROL GILBERT

Case Number:
12PDJ085

ORDER AND NOTICE OF PROBATION

On May 21 and 22, 2013, a Hearing Board held a hearing in this disciplinary matter pursuant to C.R.C.P. 251.18. On July 17, 2013, the Hearing Board issued an "Opinion and Decision Imposing Sanctions Pursuant to C.R.C.P. 251.19(b)," suspending Juliet Carol Gilbert ("Respondent") from the practice of law for a period of three months, all stayed upon successful completion of a six-month period of probation, with conditions.

Pursuant to C.R.C.P. 251.7, the Presiding Disciplinary Judge **ORDERS** that **JULIET CAROL GILBERT, ATTORNEY REGISTRATION NUMBER 25640**, IS PLACED ON **PROBATION** FOR A PERIOD OF **SIX MONTHS,** EFFECTIVE **OCTOBER 18, 2013.**

DATED THIS 18th DAY OF OCTOBER, 2013.

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Exhibit
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