

**State Bar Court of California**  
**Hearing Department**  
**Los Angeles**

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<b>Counsel For The State Bar</b>  Dane C. Dauphine Supervising Trial Counsel 1149 South Hill St. Los Angeles, CA 90015-2299 Tel. (213) 765-1293  Bar # 121606	<b>Case Number (s)</b> 09-O-15677, 10-J-08313  <b>PUBLIC MATTER</b>	<b>(for Court's use)</b>  <b>FILED</b> <b>DEC 09 2010</b> <b>STATE BAR COURT</b> <b>CLERK'S OFFICE</b> <b>LOS ANGELES</b>
<b>In Pro Per Respondent</b>  Michael J. Reed 13440 Cayuga Rd. Poway, CA 92064 Tel. (619) 322-7917  Bar # 228479	<b>Submitted to: Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter Of:</b> Michael John Reed,  Bar # 228479  A Member of the State Bar of California (Respondent)		

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted December 3, 2003.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 10 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
  - ☐ costs to be paid in equal amounts prior to February 1 for the following membership years:  
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - ☐ costs entirely waived

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☐ State Bar Court case # of prior case
  - (b) ☐ Date prior discipline effective
  - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
  - (d) ☐ Degree of prior discipline
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. Respondent's misconduct in failing to perform services has caused frustration and anxiety to clients and his failure to refund unearned fees has deprived them of funds.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. The misconduct involved 17 client matters.

- (8) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Respondent has been candid with the State Bar during the disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☒ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities. In 2007, Respondent was in an automobile accident in which he suffered a brain injury. Thereafter, according to Respondent, he began experiencing seizures, feelings of exhaustion, and difficulty concentrating. He also experienced feelings of depression and anxiety. The misconduct occurred following Respondent's auto accident. Respondent was evaluated by an independent medical examiner in March 2009 as part of the Colorado disciplinary matter and was found to be demonstrating recovery to the point where he was functioning in an essentially normal fashion. Thereafter, Respondent states that he experienced further problems from the medication he was taking which resulted in his decision to cease the practice of law in or about May 2009.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

Respondent has no prior discipline since his admission in 2003.

**D. Discipline:**

(1) ☒ **Stayed Suspension:**

- (a) ☐ Respondent must be suspended from the practice of law for a period of two years.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:
- (b) ☐ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of three years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of one year.
- i. ☒ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☒ and until Respondent does the following: complete payment of the restitution ordered by the Colorado Supreme Court in paragraph five of its order dated September 7, 2010 (a true and correct copy of which is attached to this stipulation).

### E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

## F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- ☐ No MPRE recommended. Reason:
- (2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule **9.20**, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule **9.20**, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☐ **Other Conditions:**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      Michael John Reed

CASE NUMBER(S): ET AL.              09-O-15677, 10-J-08313

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

**FACTS AND CONCLUSIONS OF LAW.**

**THE CURIA MATTER**

**FACTS:**

1. On May 27, 2008, Bridget Curia ("Bridget") contacted Respondent by email inquiring if he would be available to represent her in her legal matters in California. At that time, Bridget was on four year's probation in a California criminal matter in the Riverside County Superior Court. Respondent, who is also admitted to the Colorado Bar, was practicing from an office in Colorado at that time. On or about that date, Respondent replied by email that he was willing to discuss the matter with her.

2. On July 11, 2008, Bridget's mother, Dona Curia ("Dona"), contacted Respondent by email on behalf of Bridget informing Respondent that Bridget wanted to employ Respondent, and Respondent informed her that the Riverside County Superior Court website indicated that a bench warrant had been issued for Bridget's arrest on September 25, 2006, and that Bridget's former attorney had withdrawn the following month. Respondent suggested that he could contact Bridget's last probation officer or the District Attorney's Office to see what he could negotiate a resolution. Respondent stated that he would charge a reduced hourly fee of \$150 per hour and requested a \$1,000 retainer to get started. On July 14, 2008, Respondent received \$1,000 from Dona to commence representation of Bridget.

3. On August 18, 2008, Respondent informed Dona by email that he planned to go to court in early October on behalf of Bridget and would keep Bridget and Dona informed. Thereafter, Respondent did not contact any probation officer or prosecutor on behalf of Bridget or appear in court on her behalf to represent her regarding her criminal probation.

4. On October 27, 2008, Respondent informed Dona by email that he had not been able to travel to California as planned and would reschedule the matter for December 2008.

5. On December 29, 2008, Respondent informed Dona that he was not able to travel to Riverside County in December but planned on being in Riverside in late January 2009.

6. On January 21, 2009, Respondent informed Dona that he would be in communication with her soon. Thereafter, Bridget spoke to Respondent and made appointments to meet with him in San Diego, California, on four occasions, but when she arrived in San Diego, she was unable to reach Respondent by phone and never met with him.

7. On May 28, 2009, Dona sent an email to Respondent informing him that Bridget would be in San Diego to meet with him on or about May 30, 2009, but her email was returned with the message that Respondent's email address was no longer active.

8. In or about May 2009, Respondent became unavailable to represent Bridget but did not communicate with Bridget to inform her that he had withdrawn from representation. Thereafter, and Bridget employed other counsel who arranged to post bail for Bridget and negotiated a resolution of her probation matter.

9. Respondent did not earn any of the \$1,000 in advanced fees received from Dona on behalf of Bridget. On or about November 12, 2010, after Curia had made a complaint to the State Bar, Respondent paid Curia \$1,100 as a refund of unearned fees.

#### CONCLUSIONS OF LAW:

10. By not taking prompt action to address Bridget's probation violation and outstanding bench warrant despite repeated promises to do so, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

11. By not promptly refunding the unearned fees to Dona or Bridget after he became unavailable to represent Bridget, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

#### THE COLORADO DISCIPLINARY MATTER

#### FACTS:

12. The facts of the misconduct are set forth in the Colorado disciplinary stipulation which is attached to this stipulation. As described in that document, Respondent's misconduct involved sixteen client matters in which he failed to communicate with the clients in all sixteen matters, failed to diligently provide legal services in all sixteen matters, failed upon termination of his employment to take steps to protect the clients' interests such as releasing client papers in nine matters, failed to refund unearned fees in nine matters, and failed to account for advanced fees in one matter.

#### CONCLUSIONS OF LAW:

13. By failing to communicate with clients in sixteen matters, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services in willful violation of Business and Professions Code, section 6068(m).

14. By failing to diligently provide legal services in sixteen matters, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

15. By failing upon termination of employment to take steps to protect his clients' interests such as releasing client papers in the Beechwood, Younger, Long, Harvey, Steed, Montgomery, Dickinson-Seufer, Mathews, and Bennett matters, Respondent failed, upon termination of employment, to take





reasonable steps to avoid reasonably foreseeable prejudice to his client in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

16. By failing to refund unearned fees in the Beechwood, Younger, Long, Harvey, Steed, Montgomery, Dickinson-Seufer, Mathews, Bennett and Lawrence matters, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

17. By failing to provide an accounting for advanced fees in the Reichert matter, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

#### **AGREEMENT PURSUANT TO BUSINESS AND PROFESSIONS CODE § 6049.1.**

Respondent agrees that his culpability determined in the disciplinary proceeding in Colorado would warrant the imposition of discipline in the State of California under the laws or rules in effect in this State at the time the misconduct was committed as set forth above. Also, Respondent agrees that the Colorado disciplinary proceeding provided Respondent with fundamental constitutional protection.

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was November 12, 2010.

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct provide, at Standard 2.4(a), provide for disbarment for culpability of a member of a pattern of willfully failing to perform services demonstrating abandonment of clients. The case law indicates that suspension is imposed, however, when there are extenuating circumstances, and the Supreme Court "has considered most significant the existence or non-existence of a tragic event or set of circumstances which altered the attorney's behavior, which could explain the attorney's misconduct followed by sufficient evidence of rehabilitation to give the court confidence that the attorney's pattern would not repeat." (*In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1 (disbarment for misconduct in 14 matters over 9 years of practice and misappropriation of over \$17,000 in advance fees and costs).) In *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, the Supreme Court imposed a one year actual suspension for misconduct in 14 client matters, including 13 instances of failure to perform and dishonest acts in 4 cases which occurred after the attorney had suffered a series of tragic personal and health calamities and presented clear evidence of two or three years of trouble-free conduct. Here, Respondent suffered a traumatic brain injury prior to his misconduct which impacted his practice. This stipulation for one year actual suspension is consistent with the *Silva-Vidor* case but provides that he will remain suspended until he completes restitution and shows rehabilitation pursuant to standard 1.4(c)(ii) since there has been insufficient time for Respondent to establish rehabilitation. The State Bar believes that this disposition is within the range of appropriate discipline and will provide sufficient protection of the public to meet the goals of attorney discipline.

(Do not write above this line.)

In the Matter of Michael John Reed, no. 228479	Case number(s): 09-O-15677, 10-J-08313
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### SIGNATURE OF THE PARTIES


By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

11/15/2010  
Date

  
Respondent's Signature

Michael J. Reed  
Print Name

11-17-10  
Date

Respondent's Counsel Signature  
  
Deputy Trial Counsel's Signature

Print Name  
Dane C. Dauphine  
Print Name

(Do not write above this line.)

In the Matter Of  
**MICHAEL JOHN REED**

Case Number(s):  
**09-O-15677**

### ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public,  
IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without  
prejudice, and:

- ☐ The stipulated facts and disposition are APPROVED and the DISCIPLINE  
RECOMMENDED to the Supreme Court.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth  
below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

On page 4, paragraph D(3)(a)(iii) is modified by adding the following after the word  
"stipulation":

" , plus any interest imposed by the Colorado Supreme Court on the restitution  
amounts."

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify  
the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies  
or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The  
effective date of this disposition is the effective date of the Supreme Court order herein,  
normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

12-2-10

  
Richard A. Honn  
Judge of the State Bar Court

# Supreme Court

State of Colorado

Certified to be a full, true and correct copy

SUPREME COURT, STATE OF COLORADO  ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202		SEP 07 2010  Office of the Presiding Disciplinary Judge By <u>[Signature]</u>
Complainant: THE PEOPLE OF THE STATE OF COLORADO,  Respondent: MICHAEL JOHN REED.		Case Number: <b>09PDJ054</b> <b>(Consolidated with 10PDJ011)</b>
<b>ORDER APPROVING CONDITIONAL ADMISSION OF MISCONDUCT AND IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.22</b>		

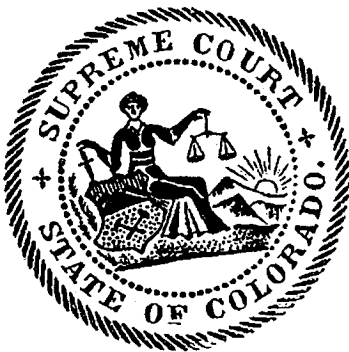
This matter is before the Presiding Disciplinary Judge ("the Court") on a "Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct" filed by April M. McMurrey, Office of Attorney Regulation Counsel ("the People"), and Michael D. Gross on behalf of Michael John Reed ("Respondent") on August 24, 2010. In this stipulation, the parties waive their right to a hearing under C.R.C.P. 251.22(c).


The Court, having reviewed the case file and the stipulation, and being fully advised of the issues presented, **ORDERS** the following:

1. The stipulation is accepted and approved.
2. **MICHAEL JOHN REED, Attorney Registration No. 36398, is SUSPENDED from the practice of law for a period of THREE (3) YEARS.**
3. Pursuant to C.R.C.P. 251.32, Respondent shall pay costs incurred in conjunction with this matter in the amount of \$4,313.00 within one year of the date of this order. Costs are payable to the Colorado Supreme Court Attorney Regulation Offices. Statutory interest shall accrue from the date of this order. Should Respondent fail to make payment of the aforementioned costs and interest within one year, Respondent shall be responsible for all additional costs and expenses, including reasonable attorney fees, incurred by the People in collecting the above-stated amount. The People may amend the amount of the judgment for additional costs and expenses by providing a motion and bill of costs to the Court.

4. The Court **GRANTS** the People's request to dismiss Claim II and Claim VII from the complaint in 09PDJ054 alleging violations of Colo. RPC 1.15(a).
5. As a condition precedent to any petition for reinstatement, Respondent shall make restitution to the following clients in the following amounts:<sup>1</sup>
  - a. Adam Reichert in the amount of \$2,500.00;
  - b. Joel and Luke Gheen in the amount of \$1,000.00;
  - c. James and Elsie Beechwood in the amount of \$1,000.00;
  - d. Delores Younger in the amount of \$2,000.00;
  - e. A. Marvin Long in the amount of \$4,500.00;
  - f. Betty Lou Harvey in the amount of \$1,000.00;
  - g. Marie Steed in the amount of \$1,000.00; and
  - h. Kara and Rick Lawrence in the amount of \$4,000.00.
6. As a condition precedent to any petition for reinstatement, Respondent shall undergo an independent medical examination by a qualified doctor approved by the People. Respondent shall be responsible for the cost of the examination.
7. Finally, the Court **VACATES** the three-day hearing in this matter scheduled to commence on Tuesday, October 19, 2010.

**THIS ORDER IS ENTERED THE 25<sup>TH</sup> DAY OF AUGUST, 2010.  
THE EFFECTIVE DATE OF THE SUSPENSION IS THE 25<sup>TH</sup> DAY  
OF AUGUST, 2010.**



  
WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE

---

<sup>1</sup> In the event the Attorneys' Fund for Client Protection makes a payment to one of these clients, Respondent shall instead reimburse the fund.

**Counsel for Respondent**

Michael D. Gross  
1771 South 8<sup>th</sup> Street  
Colorado Springs, CO 80906

Via First Class Mail

**IRS, Office of Professional Responsibility**

Attn: Kathy Gibbs  
SE: OPR, 1111, Constitutional Ave., N.W.  
Washington, DC 20224

Via First Class Mail

**Office of Attorney Regulation Counsel**

April M. McMurrey  
1560 Broadway, Suite 1800  
Denver, CO 80202

Via Hand Delivery

**Martindale Hubbell Law Directory**

Attn: Joe Rudy, Rating Consultant  
P.O. Box 31  
New Providence, NJ 07974

Via First Class Mail

**American Bar Association**

c/o Nadine Cignoni  
Office of Attorney Regulation Counsel  
1560 Broadway, Suite 1800  
Denver, CO 80202

Via Hand Delivery

**Metro Lawyer Referral Service**

3000 South Jamaica Court, Suite 120  
Aurora, CO 80014

Via First Class Mail

**Supreme Court of the United States**

Perry Thompson  
Admissions Office  
1 First Street Northeast  
Washington, D.C. 20543

Via First Class Mail

**Board of Continuing Legal Education**

Karen Bradley  
Assistant Executive Director  
1560 Broadway, Suite 1820  
Denver, CO 80202

Via Hand Delivery

**United States Bankruptcy Court**

Brad Bolton  
721 19<sup>th</sup> Street, Room 117  
Denver, CO 80202-2508

Via First Class Mail

**Colorado Attorney Registration**

Elvia Mondragon  
1560 Broadway, Suite 1810  
Denver, CO 80202

Via Hand Delivery

**United States Court of Appeals  
for the Tenth Circuit**

Byron White United States Courthouse  
1823 Stout Street  
Denver, CO 80257

Via First Class Mail

**Colorado Bar Association**

Charles Turner  
Executive Director  
1900 Grant Street, Suite 950  
Denver, CO 80203-4309

Via First Class Mail

**United States District Court,  
District of Colorado**

Alfred A. Arraj U.S. Courthouse  
Mark Fredrickson  
901 19<sup>th</sup> Street, Room A-105  
Denver, CO 80294-3589

Via First Class Mail

**Colorado Supreme Court**

Susan Festag  
101 West Colfax Avenue, Suite 800  
Denver, CO 80202

Via Hand Delivery

## SUPREME COURT, STATE OF COLORADO

ORIGINAL PROCEEDING IN DISCIPLINE  
BEFORE THE PRESIDING DISCIPLINARY JUDGE  
1560 Broadway, Suite 675  
Denver, Colorado 80202

Complainant:  
THE PEOPLE OF THE STATE OF COLORADO

Respondent:  
MICHAEL JOHN REED

April M. McMurrey, #34194  
Assistant Regulation Counsel  
Attorney for Complainant  
1560 Broadway, Suite 1800  
Denver, Colorado 80202  
Telephone: (303) 866-6400 ext. 6432  
Fax No.: (303) 893-5302

Michael D. Gross, #14113  
Broadmarket Square  
1771 S. 8th Street  
Colorado Springs, CO 80906  
Telephone: (719) 635-5578  
Fax No.: (719) 578-5192

**FILED**

AUG 24 2010

PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF COLORADO

▲ COURT USE ONLY ▲

Case Number: 09PDJ094  
(Consolidated with 54  
10PDJ011)

**Supreme Court**State of Colorado  
Certified to be a full, true and correct copy

SEP 07 2010

Office of the  
Presiding Disciplinary Judge  
By [Signature]**STIPULATION, AGREEMENT AND AFFIDAVIT CONTAINING THE  
RESPONDENT'S CONDITIONAL ADMISSION OF MISCONDUCT**

On this 24<sup>th</sup> day of August, 2010, April M. McMurrey, Assistant Regulation Counsel and attorney for the complainant, and Michael John Reed, the respondent, who is represented by attorney Michael D. Gross in these proceedings, enter into the following stipulation, agreement, and affidavit containing the respondent's conditional admission of misconduct ("stipulation") and submit the same to the Presiding Disciplinary Judge for his consideration.

**RECOMMENDATION: Suspension for three years.**

1. The respondent has taken and subscribed the oath of admission, was admitted to the bar of this Court on May 18, 2005, and is registered as an attorney upon the official records of this Court, registration no. 36398. The

respondent is subject to the jurisdiction of this Court and the Presiding Disciplinary Judge in these proceedings.

2. The respondent enters into this stipulation freely and voluntarily. No promises have been made concerning future consideration, punishment, or lenience in the above-referenced matter. It is the respondent's personal decision, and the respondent affirms there has been no coercion or other intimidating acts by any person or agency concerning this matter.

3. This matter has become public under the operation of C.R.C.P. 251.31(c) as amended.

4. The respondent is familiar with the rules of the Colorado Supreme Court regarding the procedure for discipline of attorneys and with the rights provided by those rules. The respondent acknowledges the right to a full and complete evidentiary hearing on the above-referenced complaint. At any such hearing, the respondent would have the right to be represented by counsel, present evidence, call witnesses, and cross-examine the witnesses presented by the complainant. At any such formal hearing, the complainant would have the burden of proof and would be required to prove the charges contained in the complaint with clear and convincing evidence. Nonetheless, having full knowledge of the right to such a formal hearing, the respondent waives that right.

5. The respondent and the complainant specifically waive the right to a hearing pursuant to C.R.C.P. 251.22(c)(1).

6. The respondent has read and studied the complaints denominated as *People v. Michael John Reed*, 09PDJ054 and *People v. Michael John Reed*, case no. 10PDJ011 and is familiar with the allegations therein<sup>1</sup>. True and correct copies of the complaints are attached to this stipulation as **Exhibit 1** and **Exhibit 2**. The respondent affirms under oath that the following facts and conclusions are true and correct:

#### Respondent's Medical Issues

a. In 2007, the respondent was in an automobile accident, in which he suffered a brain injury. Thereafter, according to the respondent, he began experiencing seizures, feelings of exhaustion, and difficulty concentrating.

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<sup>1</sup> These matters were consolidated on March 4, 2010, and thereafter captioned as case number "09PDJ054(consolidated with 10PDJ011)".



b. Following the automobile accident, the respondent also suffered from depression and anxiety.

c. All of the conduct set forth in the complaints and in the two investigation matters described below occurred after the respondent's automobile accident.

Case no. 09PDJ054(consolidated with 10PDJ011)

d. As described in detail in *Exhibit 1* and *Exhibit 2*, in fourteen client matters the respondent failed to abide by his professional obligations.

e. In all fourteen matters, the respondent failed to communicate with his clients and failed to diligently provide legal services in violation of Colo. RPC 1.4(communication) and Colo. RPC 1.3(diligence).

f. In the Gheen and Reichert matters (09PDJ054), and in the Beechwood, Younger, Long, Harvey, and Steed matters (10PDJ011), the respondent failed to return unearned funds to these clients in violation of Colo. RPC 8.4(c)(conversion). Respondent's conversion of client funds was not knowing, but was reckless.

g. In case no. 10PDJ011, in the Beechwood, Younger, Long, Harvey, Steed, Montgomery, Dickinson-Seufer, Mathews, and Bennett matters, the respondent failed to take steps to protect the clients' interests such as surrendering papers and property to which the clients were entitled, in violation of Colo. RPC 1.16(d)(upon termination, a lawyer shall take steps to protect a client's interests such as surrendering papers and property to which the client is entitled).

h. In case no. 09PDJ054, in the McIrvin and Rutherford matters, the respondent failed to safeguard client funds by failing to deposit these clients' retainers into his trust account in violation of Colo. RPC 1.15(a)(a lawyer shall hold property of third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property).

i. In the Reichert matter in 09PDJ054, the respondent failed to have a written fee agreement with client Reichert, in violation of Colo. RPC 1.5(b)(written communication of basis or rate of the fee), and failed to provide an accounting to client Reichert, in violation of Colo. RPC 1.15(b)(a lawyer shall promptly upon request by the client or third person, render a full accounting regarding such property).

Investigation case no. 10-00184 [Lawrence Matter]

j. In February 2008, Kara and Rick Lawrence hired the respondent to prepare a family trust. The Lawrences paid the respondent \$1,500 in June 2008 and \$1,500 in August 2008, for a total of \$3,000 to complete the trust. The Lawrences also paid the respondent \$1,000.00 in June 2008 as a retainer to prepare their corporate books.

k. The Lawrences gave the respondent bonds that belonged to their sons which they wanted to include in funding the trust. There were 12 \$50.00-bonds totaling \$600.00. The Lawrences also gave the respondent documents pertaining to their corporation.

l. In early 2009, the Lawrences had difficulty getting in contact with the respondent. His phone had been disconnected. They located a new phone number for the respondent and left messages. The respondent failed to return their calls. The respondent failed to communicate with the clients and failed to diligently complete their legal work in violation of Colo. RPC 1.4(communication) and Colo. RPC 1.3(diligence).

m. In February 2010, respondent's disciplinary counsel returned the 12 bonds to the Lawrences, and made the Lawrences' papers accessible to them at counsel's office.

n. The respondent did not complete the work which he had been hired to perform, but did not return any of the clients' funds.

o. Respondent's conversion of the Lawrences' funds was reckless, in violation of Colo. RPC 8.4(c)(conversion).

Investigation case no. 10-00348 [Serfoss Matter]

a. Willard and Margaret Serfoss hired the respondent to create a living trust and fund the trust, and create the necessary documents for the trust, including powers of attorney. The Serfosses paid the respondent \$2,000 on March 11, 2008 and \$1,000 on July 31, 2008. After July 31, 2008, the respondent ceased communicating with the Serfosses and did not provide to the Serfosses the documents he had been paid to complete, in violation of Colo. RPC 1.4(communication) and Colo. RPC 1.3(diligence).

b. In October 2009, the respondent provided client files to the Office of Attorney Regulation Counsel ("OARC"), which included trust documents regarding the Serfosses. OARC provided the documents to the

Serfosses.

7. Pursuant to C.R.C.P. 251.32, the respondent agrees to pay costs in the amount of \$4,313.10 (a copy of the statement of costs is attached hereto as **Exhibit 3**) incurred in conjunction with this matter within one year after acceptance of the stipulation by the Presiding Disciplinary Judge, made payable to Colorado Supreme Court Attorney Regulation Offices. The respondent agrees that statutory interest shall accrue from the date that the Presiding Disciplinary Judge accepts this stipulation. Should the respondent fail to make payment of the aforementioned costs and interest within one year, the respondent specifically agrees to be responsible for all additional costs and expenses, such as reasonable attorney fees and costs of collection incurred by the complainant in collecting the above stated amount. The complainant may amend the amount of the judgment for the additional costs and expenses by providing a motion and bill of costs to the Presiding Disciplinary Judge, which identifies this paragraph of the stipulation and the respondent's default on the payment.

8. Count II and Count VII in the complaint in 09PDJ054 charge the respondent with violations of Colo. RPC 1.15(a). Based upon the discovery performed to date, and as part of the stipulation and agreement containing respondent's conditional admission of misconduct, the complainant moves that these alleged violations of the Colorado Rules of Professional Conduct be dismissed.

9. This stipulation is premised and conditioned upon acceptance of the same by the Presiding Disciplinary Judge. If for any reason the stipulation is not accepted without changes or modification, then the admissions, confessions, and stipulations made by the respondent will be of no effect. Either party will have the opportunity to accept or reject any modification. If either party rejects the modification, then the parties shall be entitled to a full evidentiary hearing; and no confession, stipulation, or other statement made by the respondent in conjunction with this offer to accept discipline of a three-year suspension may be subsequently used. If the stipulation is rejected, then the matter will be heard and considered pursuant to C.R.C.P. 251.18.

10. The Office of Attorney Regulation Counsel has notified or will notify shortly after the parties sign this agreement, the complaining witnesses in the matters of the proposed disposition.

11. Respondent's counsel, Michael Gross, hereby authorizes the respondent, Michael John Reed, and the non-lawyer individual in the Office of Attorney Regulation Counsel who is responsible for monitoring the conditions

set forth herein to communicate directly concerning scheduling and administrative issues or questions. Respondent's counsel will be contacted concerning any substantive issue that may arise.

12. As a condition precedent to any petition for reinstatement, the parties stipulate the respondent shall make restitution in the following amounts for the following clients:

- a. Adam Reichert, in the amount of \$2,500;
- b. Joel and Luke Gheen, in the amount of \$1,000;
- c. James & Elsie Beechwood, in the amount of \$1,000;
- d. Delores Younger, in the amount of \$2,000;
- e. A. Marvin Long, in the amount of \$4,500;
- f. Betty Lou Harvey, in the amount of \$21,060;
- g. Marie Steed, in the amount of \$1,000;
- h. Kara and Rick Lawrence, in the amount of \$4,000.

The Attorneys' Fund for Client Protection has made payment in the Reichert matter in the amount of \$2,500. As a condition precedent to any petition for reinstatement, the parties stipulate the respondent shall make restitution to the named client, or, if the Attorneys' Fund for Client Protection has made payment, the respondent agrees to make restitution to the Attorneys' Fund for Client Protection.

13. As a condition precedent to any petition for reinstatement, the parties stipulate the respondent shall undergo an independent medical exam by a qualified doctor approved by the Office of Attorney Regulation Counsel. The respondent shall be responsible for the cost of the evaluation.

#### **PRIOR DISCIPLINE**

14. None.

#### **ANALYSIS OF DISCIPLINE**

15. Pursuant to American Bar Association *Standards for Imposing Lawyer Sanctions* 1991 and Supp. 1992 ("ABA Standards"), §3.0, the Court should consider the following factors generally:

- a. The duty violated: The respondent violated his duty to communicate with his clients, his duty to provide diligent representation, his duty to return unearned clients funds, and his duty to protect the clients' interest following termination of the representation.

b. The lawyer's mental state: The respondent's mental state was reckless.

c. The actual or potential injury caused by the lawyer's misconduct: The respondent consumed funds which did not belong to him, thereby depriving his clients of their money. He caused his clients frustration and anxiety by failing to timely complete the work he was hired to do and by failing to communicate with the clients. In some cases, the respondent failed to return client property, including client files. The files were only returned after OARC arranged for return of the files to the clients.

d. The existence of aggravating or mitigating factors: Factors in aggravation which are present include: a pattern of misconduct and multiple offenses, ABA *Standards* §9.22(c) and (d). Factors in mitigation include: absence of prior disciplinary record, personal or emotional problems, inexperience in the practice of law, and remorse, ABA *Standards* §9.32(a), (c), (f) and (l).

16. Pursuant to ABA *Standard* §4.11, disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to the client. See *People v. Varallo*, 913 P.2d 1(Colo. 1996). Pursuant to ABA *Standard* §4.12, suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. See *People v. Zimmerman*, 922 P.2d 325 (Colo. 1996); *People v. Dickinson*, 903 P.2d 1132 (Colo. 1995); and *People v. McGrath*, 780 P.2d 492 (Colo. 1989).

In these cases, in multiple client matters, the respondent converted client funds. The respondent's conduct caused actual injury to his clients. Because the respondent's mental state was one of recklessness and was not knowing, suspension, rather than disbarment, is warranted. Due to the multiple instances of misconduct, the *Standards* and case law support a lengthy suspension. In mitigation, during the timeframe the misconduct occurred, the respondent suffered from personal and emotional problems due to his automobile accident in 2007.

17. Considering all of the factors described above, as applied to this case, a period of suspension for three years, with conditions precedent for reinstatement is an appropriate sanction. This result takes account of the respondent's conduct, as well as the personal and emotional issues he was experiencing when the conduct occurred, and will ensure the public is protected.

Aug 24 2010 10:24AM HP LASERJET FAX

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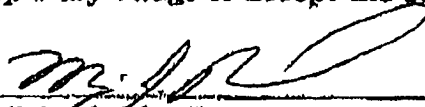
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**RECOMMENDATION FOR AND CONSENT TO DISCIPLINE**

Based on the foregoing, the parties hereto recommend that a three year suspension be imposed upon the respondent. The respondent consents to the imposition of discipline of a three-year suspension. The parties request that the Presiding Disciplinary Judge order that the effective date of such discipline be immediate, as the respondent has not practiced law for over one year and is currently administratively suspended from the practice, and thus has no clients and no practice to wind up.

Michael John Reed, the respondent; Michael Gross, attorney for the respondent; and April M. McMurrey, attorney for the complainant, acknowledge by signing this document that they have read and reviewed the above and request the Presiding Disciplinary Judge to accept the stipulation as set forth above.

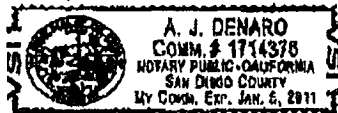
  
\_\_\_\_\_  
Michael John Reed  
Respondent  
13440 Cayuga Drive  
Poway, CA 92064  
Telephone: (619) 322-7917

STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO ) ss.

Subscribed and sworn to before me this 23 day of  
AUGUST, 2010, by Michael John Reed, respondent.

Witness my hand and official seal.

My commission expires: 01/05/2011

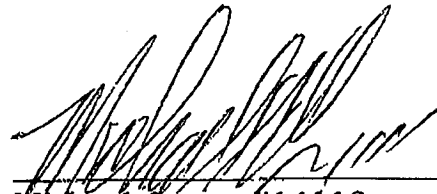


  
\_\_\_\_\_  
Notary Public



April M. McMurrey, #34194  
Assistant Regulation Counsel  
1560 Broadway, Suite 1800  
Denver, Colorado 80202  
(303) 866-6400 x 6432

Attorney for Complainant



Michael Gross, #14113  
Broadmarket Square  
1771 S. 8<sup>th</sup> Street  
Colorado Springs, CO 80906  
(719) 635-5578

Attorney for Respondent

<p><b>SUPREME COURT, STATE OF COLORADO</b></p> <p><b>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE</b> 1560 Broadway, Suite 675 Denver, Colorado 80202</p> <hr/> <p><b>Complainant:</b> <b>THE PEOPLE OF THE STATE OF COLORADO</b></p> <p><b>Respondent:</b> <b>MICHAEL JOHN REED</b></p> <hr/> <p>April M. McMurrey, #34194 Assistant Regulation Counsel John S. Gleason, #15011 Regulation Counsel Attorneys for Complainant 1560 Broadway, Suite 1800 Denver, Colorado 80202</p> <p>Telephone: (303) 866-6400, ext. 6432 Fax No.: (303) 893-5302</p>	<p><b>FILED</b></p> <p><b>JUN 12 2009</b></p> <p><b>PRESIDING DISCIPLINARY JUDGE SUPREME COURT OF COLORADO</b></p> <hr/> <p><b>▲ COURT USE ONLY ▲</b></p> <hr/> <p>Case Number:</p> <p><b>09 PDJ 054</b></p>
<p align="center"><b>COMPLAINT</b></p>	

THIS COMPLAINT is filed pursuant to the authority of C.R.C.P. 251.9 through 251.14, and it is alleged as follows:

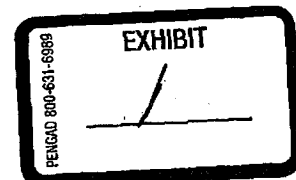
**Jurisdiction**

1. The respondent has taken and subscribed the oath of admission, was admitted to the bar of this Court on May 18, 2005, and is registered upon the official records of this Court, registration no. 36398. He is subject to the jurisdiction of this Court in these disciplinary proceedings. The respondent's registered business address is 712 West Colorado Ave, Colorado Springs, Colorado, 80905.<sup>1</sup>

**Joel & Luke Gheen v. Michael Reed**

2. Joel and Luke Gheen are brothers. In March 2008, they hired the respondent to set up a business entity for their coffee company. They wanted

<sup>1</sup> Complainant is also sending correspondence to an additional address in California that the respondent has provided complainant.





an entity that could receive investment money and conduct business internationally.

3. The written fee agreement states that the respondent was engaged to set-up a Colorado C-corporation of Alethia Coffee. The agreement was for a flat rate of \$1,350 of which \$1,200 was for legal fees; \$100 was for corporate books and \$50 was for the filing fee for the Secretary of State and the Federal EIN filing.

4. The Gheens also entered into an agreement with the respondent to keep the respondent on retainer for legal advice. This agreement provided the Gheens would pay the respondent \$1,000 annually, paid in quarterly installments of \$250. The fee agreement states that the regular hourly rate was \$350, but that under this agreement it would be \$200 an hour. The fee agreement also states the clients would immediately pay the respondent \$250 pursuant to the fee agreement.

5. The Gheens paid the respondent \$1600.00 (\$1,350 per the flat fee agreement + \$250 for the first quarterly payment of the annual retainer).

6. The respondent did not place the funds into his trust account.

7. The respondent created the C-corporation and obtained an EIN. He was in the process of drafting the by-laws when the Gheens contacted him and explained they had opted to take the advice of a lawyer in Denver and did not wish to continue working with the respondent. Thus, he had not completed the representation when the Gheens terminated the representation.

8. The respondent agreed by telephone to refund \$1,250 (permitting the respondent to keep \$350). Thereafter, the respondent did not refund any of the money. Luke Gheen emailed the respondent multiple times about the refund. The respondent initially stated he needed to prepare an invoice.

9. By the end of April 2008, the respondent advised he would get an invoice done by the following day. The respondent then advised that he believed that \$250 (sic) was too low and he thought he was entitled to additional funds. He also advised he was not able to bill at the "discounted rate" (\$200 an hour) due to the fact he and the clients had "separated." Luke Gheen emailed the respondent that nowhere in the agreement did it state anything about changing the fee agreement back from the discounted rate. He requested that the respondent "stick to the original agreement of a \$1,250 refund." The respondent responded by stating that because the corporate fee agreement was for one year, the amount was going to be \$200 an hour, but because the Gheens opted not to honor the one-year contract, the hourly rate would be \$350.

10. The Gheens advised the respondent they were considering filing a complaint with the Office of Attorney Regulation Counsel ("OARC"). The respondent emailed the Gheens and advised that although he had a flat fee agreement with them, he was willing to "retroactively bill at an hourly rate" to come up with a figure from which he could refund money to them.

11. In an effort to get any of the funds returned, Luke Gheen inquired if the respondent would be willing to compromise and return \$1,000 to the Gheens, which would allow the respondent to keep \$600. The respondent agreed via email and stated "\$1,000 and we are finished with this issue, correct? No Bar complaints that I have to notify my insurer of? If you give me your word then it is done."

12. Luke Gheen emailed the respondent and agreed to the return of \$1,000. Nevertheless, the respondent did not refund any money.

13. The Gheens had their new lawyer contact the respondent. By June 24, 2008, the respondent advised the new lawyer he was going to get the money to make the refund; the respondent has not refunded any money to the Gheens.

#### **CLAIM I**

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

14. Paragraphs 1 through 13 are incorporated herein.

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

16. The respondent agreed to provide services to set up a corporation for the Gheens for a flat fee of \$1,350, of which \$1,200 was for legal fees, \$100 was for corporate books, and \$50 was for the Secretary of State filing fee and the EIN filing.

17. The respondent also agreed to be on a retainer with the Gheens to provide legal counsel. The Gheens paid the respondent \$250 towards the total fee of \$1,000 to have the respondent on retainer.

18. The respondent did not complete the legal work to set up the corporation, did not purchase corporate books, and did not earn the initial payment on the retainer agreement.

19. The respondent failed to return any portion of the flat fee, the retainer funds, or the funds to purchase books to the Gheens.

20. By failing to return any funds to the Gheens, despite the fact the respondent had not earned the entire flat fee, had not purchased corporate books, and had not yet earned the initial payment on the retainer agreement, the respondent exercised dominion or ownership over such funds held for the Gheens' benefit.

21. In addition, pursuant to numerous conversations with the Gheens and their new counsel, the respondent agreed to return \$1,000.

22. The respondent never returned any funds to the Gheens.

23. The respondent knew that he was keeping the Gheens' funds that he had not earned, knowing that such funds should be returned to his clients because he had not earned them and knowing that keeping such funds was not authorized.

24. The respondent did not have permission from the Gheens to use their funds for his personal purposes.

25. Through the unauthorized exercise of dominion or ownership over these funds, the respondent knowingly converted or misappropriated such client funds.

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

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

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)]**

28. Paragraphs 1 through 13 are incorporated herein as if fully set forth.

29. Colo. RPC 1.15(a) provides that 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.

30. By failing to deposit the Gheens' unearned funds into his trust account, the respondent failed to keep client funds separate from his own property.

31. The respondent did not have the consent of the clients or anyone else in a position of authority to use any of the funds.

32. The respondent exercised unauthorized dominion or ownership over these funds belonging to the clients.

33. By exercising unauthorized dominion or ownership over client funds, the respondent negligently converted and/or misappropriated such funds prior to them being earned.

34. By such conduct, the respondent violated Colo. RPC 1.15(a).

WHEREFORE, the complainant prays at the conclusion hereof.

*Ron & Toni McIrvin v. Michael Reed*

35. Ron and Toni McIrvin ("the McIrvins") hired the respondent in March 2008. Pursuant to a written agreement for a \$4,000 flat fee, the respondent agreed to prepare trust and other estate planning documents on behalf of the McIrvins. The McIrvins and the respondent agreed funding of the trust would be included in the agreement.

36. The McIrvins paid the respondent the first half of the flat fee (\$2,000) in April 2008. The respondent did not deposit the client funds into his trust account.

37. The respondent prepared the trust documents. On April 11, 2008, the McIrvins met with the respondent and reviewed the documents with him. The documents had mistakes, which the respondent agreed to fix. The McIrvins sat with the respondent at his office for approximately two hours while he corrected mistakes in the documents. They did not receive a completed copy of the documents at that time.

38. The McIrvins had selected their daughter, Tia McIrvin, as the trustee of their irrevocable trust. Because the McIrvins were going to be out of town visiting Tia McIrvin in Tennessee, and their daughter needed to sign documents pertaining to the trust, the respondent agreed to send the documents directly to Tia McIrvin.

39. During the months of April (after the initial meetings) and May, the respondent did not promptly return Ron McIrvin's ("McIrvin") calls. The respondent also did not promptly send the documents to Tia McIrvin.

40. On May 16, 2008, the respondent emailed McIrvin and explained he had not yet sent the irrevocable trust to Tia McIrvin due to a computer crash, in which he lost the document and had to re-create it. The respondent also sent McIrvin a statement for services. In it, he stated that the funding process for the trust had already begun, and that the documents sent to the McIrvins' daughter would not delay the process.

41. Pursuant to the respondent's request, McIrvin paid the respondent the second half of the flat fee (\$2,000) in May 2008.

42. In the meantime, around the end of May, McIrvin expressed to the respondent he was unhappy with how the representation was going and the fact that things were taking so long.

43. By the end of May, the respondent sent the necessary documents to Tia McIrvin.

44. Tia McIrvin signed the documents and the McIrvins then sent the documents to the respondent's office, as requested by the respondent.

45. In June, McIrvin called the respondent's office to verify the respondent received the documents. McIrvin learned the office staff was unsure of the respondent's whereabouts and had not heard from him. McIrvin became increasingly concerned and requested the receptionist return the McIrvins' documents to them. McIrvin spoke to McIrvin's financial adviser, who was acquainted with the respondent and who was located in the same office as the respondent. The financial adviser told McIrvin that the respondent had left the office and his whereabouts were unknown. McIrvin told the financial adviser he did not want to continue working with the respondent.

46. The financial adviser told the respondent McIrvin wanted him to discontinue working on the matter.

47. The respondent sent an email to McIrvin on June 24, 2008 in which he advised McIrvin that the only issue remaining was funding, and stating that once he received the paperwork he sent to McIrvin, he would be able to complete the funding. The respondent stated that with respect to McIrvin's request that he discontinue working, there was not much left to do but for the funding and he hoped McIrvin would let him fund the trust.

48. After McIrvin filed the request for investigation, the respondent sent him a "trust book". The respondent enclosed a letter stating he did not

complete the funding process for the trust, and advising McIrvine where to get information regarding how to fund the trust.

49. There are errors in the documents the respondent provided to McIrvine, including that the McIrvins' grandson is not included as a beneficiary and also that some of the contact information (telephone numbers and addresses) listed in the documents is incorrect.

50. By letter dated November 24, 2008, McIrvine requested the respondent either make a full refund or refund half of the money (\$2,000) and McIrvine would keep the work the respondent did.

51. The respondent has not refunded any money to McIrvine.

### **CLAIM III**

#### **[A Lawyer Shall Act With Reasonable Diligence and Promptness in Representing a Client -- Colo. RPC 1.3]**

52. Paragraphs 35 through 51 are incorporated herein.

53. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

54. The respondent failed to act with reasonable diligence and promptness in the McIrvins' matter by failing to promptly complete the legal work.

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

56. The respondent's lack of diligence and promptness caused injury or potential injury to the client.

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM IV**  
**[Communications - Colo. RPC 1.4]**

58. Paragraphs 35 through 51 are incorporated herein.

59. Colo. RPC 1.4(a) provides that a lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

60. The respondent failed to comply with this duty of communication by failing to promptly comply with reasonable requests for information.

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

62. The respondent's pattern and practice of failing to communicate with the client caused injury or potential injury to the clients.

63. By such conduct, the respondent violated Colo. RPC 1.4.

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM V**  
**[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)]**

64. Paragraphs 35 through 51 are incorporated herein.

65. Colo. RPC 1.15(a) provides that 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.

66. By failing to deposit the McIrvins' unearned funds into his trust account, the respondent failed to keep client or third party funds separate from his own property.

67. The respondent did not have the consent of the client or anyone else in a position of authority to use any of the funds.

68. The respondent exercised unauthorized dominion or ownership over these funds belonging to a client or third party.

69. By exercising unauthorized dominion or ownership over client or third party funds, the respondent negligently converted and/or misappropriated such funds prior to them being earned.

70. By such conduct, the respondent violated Colo. RPC 1.15(a).

WHEREFORE, the complainant prays at the conclusion hereof.

*Adam Reichert v. Michael Reed*

71. Adam Reichert won the lottery in 2004. He and his mother started a real estate company. Reichert also invested the lottery money with someone who ultimately defrauded Reichert. As a result of the investment problems, Reichert had tax problems. Although he paid the IRS \$250,000, he still owed an additional \$250,000, which he could not get without selling some of the real estate. In July 2008, he contacted the respondent to assist with the tax issues.

72. The respondent was hired to provide legal counsel, attend meetings and contact the IRS regarding the tax matters. Reichert also believed the fee agreement included preparation of amended tax returns.

73. Reichert paid the respondent \$2,500. There was no written fee agreement. The respondent characterizes the fee agreement as a flat fee.

74. The respondent did not place Reichert's funds into his trust account.



75. After the first meeting, Reichert and his mother, Sherry, met with the respondent a couple of times.

76. Pursuant to the respondent's advice, Reichert had amended tax returns prepared.

77. Reichert provided the amended tax returns to the respondent.

78. According to Reichert, the respondent set forth numerous different options for how to proceed, but never really chose a plan of action.

79. The respondent missed scheduled meetings in late September and October with the Reicherts.

80. Reichert also had trouble getting in touch with the respondent. He left voicemail messages, but the respondent did not return his calls for weeks.

81. Reichert decided to hire someone else to assist him.

82. Reichert contacted the respondent in November 2008 and asked for an accounting. Although the respondent agreed to provide an invoice and refund, if appropriate, he never provided the invoice, refund or an accounting.

83. After the request for investigation was filed, the respondent provided to OARC the amended tax returns, which OARC provided to the Reicherts.

#### **CLAIM VI**

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

84. Paragraphs 71 through 83 are incorporated herein as if fully set forth.

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

86. The respondent agreed to provide legal services for a flat fee of \$2,500.

87. The respondent failed to complete the legal work.

88. The respondent failed to return any portion of the flat fee to Reichert.

89. By failing to return any funds to the client, despite the fact the respondent had not earned the entire flat fee, the respondent exercised dominion or ownership over such funds held for Reichert's benefit.

90. The respondent knew that he was keeping Reichert's funds that he had not earned, knowing that such funds should be returned to his client because he had not earned them and knowing that keeping such funds was not authorized.

91. The respondent did not have permission from the client to use his funds for his personal purposes.

92. Through the unauthorized exercise of dominion or ownership over these funds, the respondent knowingly converted or misappropriated such client funds.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

#### **CLAIM VII**

**[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)]**

95. Paragraphs 71 through 83 are incorporated herein as if fully set forth.

96. Colo. RPC 1.15(a) provides that 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.

97. By failing to deposit the client's unearned funds into his trust account, the respondent failed to keep client or third party funds separate from his own property.

98. The respondent did not have the consent of the client or anyone else in a position of authority to use any of the funds.

99. The respondent exercised unauthorized dominion or ownership over these funds belonging to a client or third party.

100. By exercising unauthorized dominion or ownership over client or third party funds, the respondent negligently converted and/or misappropriated such funds prior to them being earned.

101. By such conduct, the respondent violated Colo. RPC 1.15(a).

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM VIII**

**[A Lawyer Shall Act With Reasonable Diligence and Promptness in Representing a Client -- Colo. RPC 1.3]**

102. Paragraphs 71 through 83 are incorporated herein as if fully set forth.

103. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

104. The respondent failed to act with reasonable diligence and promptness by failing to promptly complete the legal work he agreed to do for the Reicherts.

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

106. The respondent's lack of diligence and promptness caused injury or potential injury to the client.

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM IX**  
**[Communications - Colo. RPC 1.4]**

108. Paragraphs 71 through 83 are incorporated herein as if fully set forth.

109. Colo. RPC 1.4(a) provides that a lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

110. The respondent failed to comply with this duty of communication by failing to promptly comply with reasonable requests for information.

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

112. The respondent's pattern and practice of failing to communicate with the client caused injury or potential injury to the client.

113. By such conduct, the respondent violated Colo. RPC 1.4.

WHEREFORE, the complainant prays at the conclusion hereof.

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

114. Paragraphs 71 through 83 are incorporated herein as if fully set forth.

115. Colo. RPC 1.5(b) provides when the lawyer has not regularly represented the client, the basis or rate of the fee and expenses shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. Except as provided in a written fee agreement, any material changes to the basis or rate of the fee or expenses are subject to the provisions of Rule 1.8(a).

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XI**

**[A Lawyer Shall Promptly Upon Request by the Client or Third Person,  
Render a Full Accounting Regarding Such Property  
-- Colo. RPC 1.15(b)]**

118. Paragraphs 71 through 83 are incorporated herein as if fully set forth.

119. Colo. RPC 1.15(b) provides that 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.

120. Reichert requested the respondent provide an accounting.

121. Although the respondent agreed to provide an accounting, he never provided an accounting to Reichert.

122. By such conduct, the respondent violated Colo. RPC 1.15(b).

WHEREFORE, the complainant prays at the conclusion hereof.

**Fran & Larry Rutherford v. Michael Reed**

123. Fran and Larry Rutherford hired the respondent in February 2008 to create a living trust for them. Pursuant to a written flat fee agreement, the Rutherfords paid the respondent \$3,000.

124. The respondent did not place the funds into his trust account.

125. In March 2008, the respondent gave the Rutherfords the trust, but it had many errors. The Rutherfords advised the respondent of the errors.

126. When the Rutherfords met with the respondent at his office to correct the errors, they had to wait 45 minutes before meeting with the respondent and then the process of making the corrections took two hours. The Rutherfords could not wait for the copies of the documents due to other obligations.

127. In July 2008, the Rutherfords emailed the respondent and stated they were concerned with how long things were taking and expected the respondent to complete the trust immediately and to refund some of their money. The respondent wrote back apologizing and stating all that was left to be done was funding of the trust. He also stated that if the Rutherfords were not satisfied with his work, they could proceed with some type of refund arrangement.

128. In September 2008, the Rutherfords met with the respondent to do the funding. Letters were drafted to the appropriate entities regarding funding, however, the respondent failed to send out the funding letters in September.

129. The Rutherfords believed the funding letters were sent in September 2008.

130. The Rutherfords went out of town for a couple of weeks. The respondent was supposed to contact the Rutherfords by the end of October, but he did not.

131. In December 2008, Fran Rutherford received a letter from Ameriprise saying they had received a request for funding of the trust with a letter from the respondent. The letter was dated 9/2/08, but it was not received by Ameriprise until December 2008. The letter had a sticky note from the respondent attached that stated: "Tim, pardon being late. These letters were in the wrong file and are only going out today. I appreciate your descrecrtion (sic). Any questions please call. Mike."

132. After being contacted by Ameriprise, Fran Rutherford emailed the respondent and questioned why it took so long for the respondent to send the funding documents. The respondent replied by advising Fran she did not need to worry and that all the funding documents had been sent. He did not explain that he had failed to send the documents to Ameriprise until December.

133. After the Rutherfords filed the request for investigation and notice was sent to the respondent in January 2009, the Rutherfords began emailing

the respondent demanding the respondent provide their trust documents. In January 2009, the respondent committed multiple times to Fran Rutherford via email that he would put the trust documents in the mail. He did not.

134. The Rutherfords then asked for a full refund via email. The respondent did not refund their money.

135. In February 2009, the respondent provided a large notebook that was titled "trust notebook" to OARC. OARC provided the notebook to the Rutherfords.

136. The respondent had listed himself as the Rutherfords' "trust protector" in the documents. This was an error; the Rutherfords had previously advised the respondent they did not need a trust protector.

137. Fran Rutherford contacted the respondent at the beginning of March 2009 regarding this error. The respondent agreed to promptly rectify the error, but did not provide the corrected documents until April 16, 2009.

#### **CLAIM XII**

##### **[A Lawyer Shall Act With Reasonable Diligence and Promptness in Representing a Client -- Colo. RPC 1.3]**

138. Paragraphs 123 through 137 are incorporated herein as if fully set forth.

139. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

140. The respondent failed to act with reasonable diligence and promptness by failing to promptly complete and provide the work to the Rutherfords, by failing to promptly send the funding letters, and by failing to promptly correct the error in the trust documents.

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

142. The respondent's lack of diligence and promptness caused injury or potential injury to the client.

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XIII**  
**[Communications - Colo. RPC 1.4]**

144. Paragraphs 123 through 137 are incorporated herein as if fully set forth.

145. Colo. RPC 1.4(a) provides that a lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

146. The respondent failed to comply with this duty by failing to promptly comply with reasonable requests for information.

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

148. The respondent's pattern and practice of failing to communicate with the clients caused injury or potential injury to the client.

149. By such conduct, the respondent violated Colo. RPC 1.4.

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XIV**  
**[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)]**

150. Paragraphs 123 through 137 are incorporated herein as if fully set forth.



151. Colo. RPC 1.15(a) provides that 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.

152. By failing to deposit the clients' unearned funds into his trust account, the respondent failed to keep client or third party funds separate from his own property.

153. The respondent did not have the consent of the clients or anyone else in a position of authority to use any of the funds.

154. The respondent exercised unauthorized dominion or ownership over these funds belonging to a client or third party.

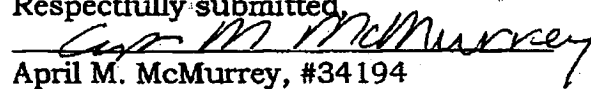
155. By exercising unauthorized dominion or ownership over client or third party funds, the respondent negligently converted and/or misappropriated such funds prior to them being earned.

156. By such conduct, the respondent violated Colo. RPC 1.15(a).

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

DATED this 12<sup>th</sup> day of June, 2009.

Respectfully submitted,

  
April M. McMurrey, #34194  
Assistant Regulation Counsel  
John S. Gleason, #15011  
Regulation Counsel  
Attorneys for Complainant

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 1560 Broadway, Suite 675 Denver, Colorado 80202</p>	<p><b>FILED</b></p> <p>FEB 09 2010</p> <p>PRESIDING DISCIPLINARY JUDGE SUPREME COURT OF COLORADO</p> <p>▲ COURT USE ONLY ▲</p>
<p>Complainant: THE PEOPLE OF THE STATE OF COLORADO</p>	<p>Case Number: <b>10PDJ011</b></p>
<p>Respondent: MICHAEL JOHN REED</p> <p>April M. McMurrey, #34194 Assistant Regulation Counsel John S. Gleason, #15011 Regulation Counsel Attorneys for Complainant 1560 Broadway, Suite 1800 Denver, Colorado 80202</p> <p>Telephone: (303) 866-6400, ext. 6432 Fax No.: (303) 893-5302</p>	
<p align="center"><b>COMPLAINT</b></p>	

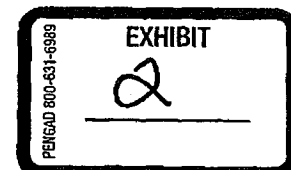
THIS COMPLAINT is filed pursuant to the authority of C.R.C.P. 251.9 through 251.14, and it is alleged as follows:

**Jurisdiction**

1. The respondent has taken and subscribed the oath of admission, was admitted to the bar of this Court on May 18, 2005, and is registered upon the official records of this Court, registration no. 36398. He is subject to the jurisdiction of this Court in these disciplinary proceedings. The respondent's registered business address is 712 West Colorado Avenue, Colorado Springs, Colorado 80905.<sup>1</sup> The respondent's license is administratively suspended.

**General Allegations**

<sup>1</sup> The respondent provided an additional address of 13440 Cayuga Drive, Poway, CA 92064 to complainant.



**James and Elsie Beechwood, case no. 09-02694**

2. James and Elsie Beechwood hired the respondent in March 2009 to represent them regarding a tax matter with the IRS.

3. The Beechwoods met with the respondent for approximately 25 minutes on March 13, 2009.

4. At that meeting, the Beechwoods paid the respondent \$1,000, via check.

5. The respondent cashed the check on March 13, 2009, the day he received it.

6. The respondent did not contact the Beechwoods after the March 13, 2009 meeting.

7. Ann Swenson ("Swenson") at Spectra Services did tax work for the Beechwoods.

8. Swenson had recommended the Beechwoods use the respondent's services.

9. After the Beechwoods hired the respondent, Swenson attempted to contact the respondent on the Beechwoods' behalf.

10. The respondent did not respond to Swenson.

11. The respondent has not communicated with Swenson or the Beechwoods.

12. The respondent did not perform any legal services for the Beechwoods.

13. The respondent has not returned any portion of the Beechwoods' \$1,000.00.

**CLAIM I**

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

14. Paragraphs 1 through 13 are incorporated herein.

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

16. The respondent agreed to provide legal services to the Beechwoods for \$1,000.

17. The respondent has not provided any legal services to the Beechwoods.

18. The respondent did not have permission from the Beechwoods to use their funds for his personal purposes.

19. By failing to provide any legal services to the Beechwoods, the respondent did not earn the fees he was paid and did not complete the services for which he had been hired.

20. The respondent has not returned any portion of the Beechwoods' money.

21. By failing to return the \$1,000 to the Beechwoods when he has not earned such fees because he has not completed any legal services, the respondent has exercised and is exercising dominion or ownership over such funds held for the Beechwoods' benefit.

22. The respondent knows that such funds should be returned to the Beechwoods because he has not earned them and knows that keeping such funds is not authorized.

23. Through the unauthorized exercise of dominion or ownership these funds, the respondent knowingly converted or misappropriated such client funds.

24. Through his conversion or misappropriation of client funds, the respondent is engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

25. The foregoing conduct of the respondent establishes grounds for discipline as provided for in C.R.C.P. 251.5 and violates Colo. RPC 8.4(c).

WHEREFORE, the complainant prays at the conclusion hereof.

#### **CLAIM II**

**[A Lawyer Shall Act With Reasonable Diligence and Promptness in Representing a Client -- Colo. RPC 1.3]**

26. Paragraphs 1 through 13 are incorporated herein as if fully set forth.

27. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

28. The respondent failed to act with reasonable diligence and promptness in the Beechwood case by failing to take any action in their tax matter.

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

30. The respondent's lack of diligence and promptness caused injury or potential injury to the client.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM III**  
**[Communications - Colo. RPC 1.4(a)]**

33. Paragraphs 1 through 13 are incorporated herein as if fully set forth.

34. Colo. RPC 1.4(a) provides that a lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

35. The respondent failed to comply with this duty of communication in the following respects:

- a. By failing to keep the Beechwoods reasonably informed about the status of their matter;
- b. By failing to promptly comply with reasonable requests for information; and
- c. By ceasing all communication with the clients.

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

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

37. The respondent's pattern and practice of failing to communicate with the client caused injury or potential injury to the client.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

#### **CLAIM IV**

**[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)]**

40. Paragraphs 1 through 13 are incorporated herein as if fully set forth.

41. Colo. RPC 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's 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.

42. The respondent effectively terminated the attorney-client relationship by failing to communicate with the Beechwoods, despite Swenson's requests on behalf of the Beechwoods to communicate with the respondent, and by failing to take any other action on behalf of the clients.

43. The respondent failed to return to the clients any portion of the \$1,000 retainer, none or little of which had been earned.

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

WHEREFORE, the complainant prays at the conclusion hereof.

**Delores Younger, case no. 09-01797**

45. Delores Younger ("Younger") hired the respondent in September 2007.

46. The respondent prepared a will and trust for Younger.

47. In November 2008, Younger hired the respondent to advise her regarding gifting land through a partnership, and to advise her regarding the sale of water rights.

48. The respondent requested a \$2,000 retainer, which Younger paid.

49. Younger spoke to the respondent by phone later in November 2008 and requested his advice regarding gifting for that year.

50. The respondent advised Younger he would get back to her, but never did.

51. Younger tried unsuccessfully to get in touch with the respondent by telephone.

52. In May 2009, Younger wrote to the respondent explaining that she had been unable to reach him at his office, cell or home telephone numbers. Younger requested the respondent return her complete file to her, including documents related to the trust and will. Younger also requested that the respondent return the \$2,000 Younger had paid, given that the respondent had not done any of the work she paid him to do.

53. The respondent did not refund any money to Younger, or otherwise account for such money, nor did he return her documents, as she requested.

54. In October 2009, the respondent provided client files to the Office of Attorney Regulation Counsel ("OARC"), which included a green notebook entitled "Estate Planning Portfolio" for Delores Younger.

55. OARC provided the notebook to Younger.

56. The notebook pertained to trust work and did not include any work regarding the gifting or sale of water rights issues.

#### **CLAIM V**

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

57. Paragraphs 45 through 56 are incorporated herein.

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

59. The respondent agreed to provide legal services, including advice regarding gifting land and the sale of water rights, to Younger for \$2,000.

60. The respondent did not provide the agreed-upon legal services to Younger.

61. The respondent did not have permission from Younger to use her funds for his personal purposes.

62. By failing to provide the agreed-upon legal services to Younger, the respondent did not earn the fees he had been paid and did not complete the services for which he had been hired.

63. The respondent has not returned any portion of Younger's money.

64. By failing to return the \$2,000 to Younger when he has not earned such fees because he has not completed any legal services, the respondent has exercised and is exercising dominion or ownership over such funds held for Younger's benefit.

65. The respondent knows that such funds should be returned to Younger because he has not earned them and knows that keeping such funds is not authorized.

66. Through the unauthorized exercise of dominion or ownership these funds, the respondent knowingly converted or misappropriated such client funds.



67. Through his conversion or misappropriation of client funds, the respondent is engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

68. The foregoing conduct of the respondent establishes grounds for discipline as provided for in C.R.C.P. 251.5 and violates Colo. RPC 8.4(c).

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM VI**

**[A Lawyer Shall Act With Reasonable Diligence and Promptness in Representing a Client -- Colo. RPC 1.3]**

69. Paragraphs 45 through 56 are incorporated herein as if fully set forth.

70. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

71. The respondent failed to act with reasonable diligence and promptness in Younger's case by failing to provide any of the agreed-upon legal services to Younger.

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

73. The respondent's lack of diligence and promptness caused injury or potential injury to the client.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM VII**  
**[Communications - Colo. RPC 1.4(a)]**

76. Paragraphs 45 through 56 are incorporated herein as if fully set forth.

77. Colo. RPC 1.4(a) provides that a lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

78. The respondent failed to comply with this duty of communication in the following respects:

- a. By failing to keep Younger reasonably informed about the status of her matter;
- b. By failing to promptly comply with Younger's reasonable requests for information; and
- c. By ceasing all communication with the client.

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

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

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

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM VIII**

**[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)]**

83. Paragraphs 45 through 56 are incorporated herein as if fully set forth.

84. Colo. RPC 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's 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.

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

86. The respondent failed to return to Younger any portion of the \$2,000 retainer, none or little of which had been earned.

87. The respondent failed to return to Younger documents belonging to her; the documents were only returned when OARC returned them to Younger.

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

WHEREFORE, the complainant prays at the conclusion hereof.

**A. Marvin Long, case no. 09-01905**

89. A. Marvin Long ("Long") hired the respondent in May 2008 to represent him and counsel him on his trust and financial affairs.

90. Long's wife had Alzheimer's disease and Long anticipated she would be moved to a nursing home.

91. Long paid the respondent \$4,500 to make amendments to Long's trust and for the respondent's assistance with Medicaid.

92. Long provided the respondent numerous documents including wills, deeds, burial plots, and documents which included his social security number.

93. From May to November 2008, the respondent assisted Long with the Medicaid application.

94. The application was approved.

95. By November 2008, the respondent explained it was necessary for him to keep Long's trust documents because there were still changes that needed to be made to the trust.

96. In March 2009, Long met with the respondent.

97. By this time, Long's wife was in a nursing home.

98. The respondent advised Long that Long's wife needed a special needs trust.

99. The respondent advised Long the cost of the special needs trust was \$2,500.

100. On April 14, 2009, Long paid the respondent \$2,500 in cash for the special needs trust.

101. Thereafter, Long decided he should consult new counsel regarding the special needs trust.

102. Long consulted new counsel and decided not to have the respondent prepare the special needs trust.

103. Long called the respondent and advised he did not want the respondent to create the special needs trust.

104. Long met with the respondent in late April 2009.

105. The respondent advised Long he needed to make two changes to the original trust, and that he would refund the \$2,500 for the special needs trust.

106. Thereafter, Long did not hear from the respondent.

107. Long attempted to contact the respondent by telephone, but when he called, the respondent's voicemail said a mailbox had not yet been set up for the phone.

108. The respondent did not create the special needs trust.

109. The respondent never refunded the \$2,500 to Long and never returned his trust documents.

110. In October 2009, respondent provided documents to OARC, including a black folder and two red folders with original documents belonging to Long.

111. OARC provided these documents to Long.

112. The documents did not include Long's trust documents.

113. As of the date of this complaint, the respondent has not returned all of Long's documents.

#### **CLAIM IX**

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

114. Paragraphs 89 through 113 are incorporated herein.

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

116. The respondent agreed to provide legal services, including creating a special needs trust for \$2,500, and updating Long's trust and assisting with the Medicaid application for \$4,500.

117. Long decided he did not want the special needs trust.

118. The respondent had not completed the special needs trust.

119. The respondent agreed to refund the \$2,500, but failed to do so.

120. The respondent agreed to update Long's trust, but failed to do so. Accordingly, the respondent did not earn the entire \$4,500.00.

121. The respondent did not have permission from Long to use his funds for his personal purposes.

122. The respondent has not returned any portion of Long's money.

123. By failing to return Long's funds, when the respondent has not earned such fees, the respondent has exercised and is exercising dominion or ownership over such funds held for Long's benefit.

124. The respondent knows that such funds should be returned to Long because he has not earned them and knows that keeping such funds is not authorized.

125. Through the unauthorized exercise of dominion or ownership these funds, the respondent knowingly converted or misappropriated such client funds.

126. Through his conversion or misappropriation of client funds, the respondent is engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

127. The foregoing conduct of the respondent establishes grounds for discipline as provided for in C.R.C.P. 251.5 and violates Colo. RPC 8.4(c).

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM X**

**[A Lawyer Shall Act With Reasonable Diligence and Promptness in Representing a Client -- Colo. RPC 1.3]**

128. Paragraphs 89 through 113 are incorporated herein as if fully set forth.

129. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

130. The respondent failed to act with reasonable diligence and promptness by failing to timely complete the changes to the original trust.

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

132. The respondent's lack of diligence and promptness caused injury or potential injury to Long.

133. The respondent's pattern and practice of failing to accomplish his professional tasks for Long, coupled with the failure to communicate with Long, constitutes abandonment of the professional responsibilities owed to the

client. The totality of facts demonstrates that the respondent effectively deserted, rejected and/or relinquished the professional responsibilities owed to the client.

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XI**  
**[Communications - Colo. RPC 1.4(a)]**

135. Paragraphs 89 through 113 are incorporated herein as if fully set forth.

136. Colo. RPC 1.4(a) provides that a lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

137. The respondent failed to comply with his duty of communication in the following respects:

- a. By failing to keep Long reasonably informed about the status of his matter;
- b. By failing to promptly comply with Long's reasonable requests for information; and
- c. By ceasing all communication with the client.

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

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

139. The respondent's pattern and practice of failing to communicate with the client caused injury or potential injury to the client.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XII**

**[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)]**

142. Paragraphs 89 through 113 are incorporated herein as if fully set forth.

143. Colo. RPC 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's 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.

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

145. The respondent failed to return to Long any portion of the \$2,500 retainer for the special needs trust, none of which had been earned; the respondent failed to refund any portion of the \$4,500 Long paid for the updates to his trust, despite the respondent's failure to update the trust; and the respondent has failed to return Long's trust documents.

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

WHEREFORE, the complainant prays at the conclusion hereof.



**Betty Lou Harvey, case no. 09-01601**

147. In 2007, Betty Lou Harvey ("Harvey") hired the respondent to complete various legal tasks, including: revising her living trust, resolving probate issues regarding Harvey's deceased mother and deceased husband, creating and funding nine LLCs, and changing the ownership of a life insurance policy that was still titled in Harvey's late husband's name.

148. The respondent advised that the trust work would cost \$10,000 and the LLC work would cost \$10,000.

149. Harvey signed two fee agreements on August 27, 2008.

150. One fee agreement was between the respondent and Harvey, in her capacity as the personal representative for her mother's estate (Estate of Carmel Theresa Pace).

151. The other fee agreement was between the respondent and Harvey in her capacity as the personal representative for her deceased husband's estate (Estate of Robert L. Harvey).

152. Both fee agreements stated the legal services that would be provided would be "probate."

153. Both fee agreements stated the respondent's rate would be \$300 an hour.

154. Harvey paid the respondent a total of \$21,060.00.

155. On August 27, 2007, Harvey paid the respondent \$1,000.

156. On September 5, 2007, Harvey paid the respondent \$8,500.

157. The first two payments were for the trust work.

158. On November 12, 2007, Harvey paid the respondent \$11,560, for the creation of the LLCs.

159. Harvey recalls the respondent had her sign numerous documents, but she was not provided copies of the documents.

160. On March 24, 2009, the respondent advised Harvey and her financial adviser that all the work was done, but the respondent did not provide any documents to Harvey.

161. The respondent advised Harvey he completed the creation of the LLCs.

162. Harvey requested the respondent provide her proof of completion of the work, but he did not provide any confirmation he created the LLCs.

163. The respondent also did not provide Harvey a billing statement to demonstrate what he had done.

164. On May 5, 2009, the respondent was scheduled to meet with Harvey, but he canceled the appointment.

165. Despite her efforts, Harvey could not get in touch with the respondent thereafter.

166. In October 2009, the respondent provided client files to OARC, which included documents regarding Harvey. The documents included an operating agreement for Lou Holdings, LLC, and the Betty Lou Harvey Living Trust (created in 1996, and amended by the respondent in 2007), a living will, a pour-over will, two general durable powers of attorney (one listing the respondent as the agent; the other listing Harvey's son as the agent, and the respondent with the ability to appoint a successor), a healthcare power of attorney (which includes the respondent as someone who may have access to Harvey's medical information).

167. OARC provided the documents the respondent provided to Harvey.

168. Harvey is meeting with James Campbell, her financial planner at Colorado Retirement Resources, to review the documents and determine if the estate work is complete and accurate.

169. Upon information and belief, the respondent did not create the nine LLCs.

### **CLAIM XIII**

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

170. Paragraphs 147 through 169 are incorporated herein.

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

172. The respondent agreed to provide numerous legal services to Harvey including estate work and creating nine LLCs.

173. Harvey paid the respondent \$21,060.

174. The respondent never provided any evidence to Harvey that he completed the legal work.

175. Based on documents OARC provided to Harvey in 2009, it appears the respondent performed some work on the estate matters.

176. There is no evidence the respondent completed the LLC work.

177. The respondent did not have permission from Harvey to use her funds for his personal purposes.

178. The respondent has not returned any portion of Harvey's money.

179. By failing to return Harvey's funds, when the respondent has not earned such fees, the respondent has exercised and is exercising dominion or ownership over such funds held for Harvey's benefit.

180. The respondent knows that such funds should be returned to Harvey because he has not earned them and knows that keeping such funds is not authorized.

181. Through the unauthorized exercise of dominion or ownership these funds, the respondent knowingly converted or misappropriated such client funds.

182. Through his conversion or misappropriation of client funds, the respondent is engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

183. The foregoing conduct of the respondent establishes grounds for discipline as provided for in C.R.C.P. 251.5 and violates Colo. RPC 8.4(c).

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XIV**

**[A Lawyer Shall Act With Reasonable Diligence and Promptness in  
Representing a Client -- Colo. RPC 1.3]**

184. Paragraphs 147 through 169 are incorporated herein as if fully set forth.

185. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

186. The respondent failed to act with reasonable diligence and promptness in Harvey's case by failing to promptly provide the agreed-upon legal services to Harvey.

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

188. The respondent's lack of diligence and promptness caused injury or potential injury to the client.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XV**

**[Communications - Colo. RPC 1.4(a)]**

191. Paragraphs 147 through 169 are incorporated herein as if fully set forth.

192. Colo. RPC 1.4(a) provides that a lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

193. This respondent failed to comply with this duty of communication in the following respects:

- a. By failing to keep Harvey reasonably informed about the status of her matter;
- b. By failing to promptly comply with Harvey's reasonable requests for information; and
- c. By ceasing all communication with the client.

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

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

195. The respondent's pattern and practice of failing to communicate with the client caused injury or potential injury to the client.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XVI**

**[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)]**

198. Paragraphs 147 through 169 are incorporated herein as if fully set forth.

199. Colo. RPC 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's 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.

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

201. The respondent failed to return to Harvey any portion of the \$21,060 retainer, not all of which had been earned.

202. The respondent failed to return to Harvey documents belonging to her; the documents were only returned when OARC returned them to Harvey.

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

WHEREFORE, the complainant prays at the conclusion hereof.

**Marie Steed, case no. 09-01808**

204. Bob and Marie Steed hired the respondent to incorporate Thirion, Inc. as an "S" corporation.

205. The Steeds also wanted advice regarding franchise documents and lease documents.

206. Pursuant to a written fee agreement, the Steeds paid the respondent \$1,350.00.

207. On July 17, 2008, the Steeds met with the respondent to finalize and review the incorporation documents.

208. On March 13, 2009, the Steeds met with the respondent to discuss the fact that the State of Colorado did not have any record of the Steeds filing for "S" corporation status.

209. The respondent presented the Steeds with documents to sign and fax to the state and the IRS to rectify the situation.

210. The respondent assured the Steeds the filing had been accomplished in 2008.

211. At the meeting, the Steeds discussed with the respondent the need to update their living trust documents.

212. The respondent agreed to review the living trust documents and provide the Steeds with a fee structure to draft a new living trust.

213. The Steeds gave the respondent a copy of the original Steed Family Living Trust.

214. The Steeds also consulted the respondent regarding a personal injury/auto accident that occurred in California.

215. The respondent had law licenses in Colorado and California.

216. The respondent agreed to assist the Steeds with the California matter.

217. The respondent was paid \$100 to investigate the facts of the personal injury case.

218. The Steeds discussed with the respondent that there was a court date set for June 5, 2009 in California.

219. The respondent assisted the Steeds in reviewing online what pleadings had been filed and made plans to assist with responding to interrogatories.

220. On April 1, 2009, the Steeds met with the respondent.

221. The respondent verbally agreed to rewrite the amendments needed to update the living trusts for \$1,500.

222. The respondent also agreed to update the Steeds' daughter's trust for \$1,000.

223. The respondent agreed to accept five monthly payments of \$500 for the Steeds' work and their daughter's work.

224. The Steeds wrote the respondent a check for \$500.

225. The remaining payments were to be sent by the first of each month.

226. The respondent explained he was going to take a trip to California for ten days.

227. The respondent gave the Steeds his cell phone number.

228. The Steeds tried to call the respondent numerous times while he was gone, but he did not call them back until he returned to Colorado.

229. On April 20, 2009, the Steeds met with the respondent again to discuss the living trust amendments and the pending court date.

230. The respondent asked for another \$500 for the living trust amendments.

231. The respondent explained he was moving back to California and could use the money.

232. Marie Steed gave the respondent a check for \$500.00.

233. Thereafter, the Steeds were unable to get in touch with the respondent, despite their calls and emails to him.

234. The respondent did not return their calls or respond to their emails.

235. By letter dated May 27, 2009, the Steeds requested the respondent return their living trust documents.

236. The respondent did not return their documents.

237. The Steeds paid the respondent a total of \$1,100 (\$100 for the personal injury matter and \$1,000 for the trust work).

238. The respondent performed work for the personal injury matter.

239. The respondent did not provide any estate planning documents to the Steeds, and therefore, did not earn the \$1,000.

240. The respondent has failed to refund any portion of the \$1,000.

241. In October 2009, the respondent provided client documents to OARC, including documents from other law firms belonging to the Steeds.

242. OARC returned these documents to the Steeds.

#### **CLAIM XVII**

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

243. Paragraphs 204 through 242 are incorporated herein.

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



245. The respondent agreed to provide legal services for the trust work to the Steeds and their daughter for \$2,500.

246. The respondent agreed to accept five monthly payments of \$500.

247. The Steeds paid the respondent \$1,000 towards the \$2,500.

248. The respondent did not complete the trust work for the Steeds and their daughter.

249. The respondent did not have permission from the Steeds to use their funds for his personal purposes.

250. The respondent has not returned any portion of the Steeds' money.

251. By failing to return the Steeds' funds, when the respondent has not earned such fees, the respondent has exercised and is exercising dominion or ownership over such funds held for the Steeds' benefit.

252. The respondent knows that such funds should be returned to the Steeds because he has not earned them and knows that keeping such funds is not authorized.

253. Through the unauthorized exercise of dominion or ownership these funds, the respondent knowingly converted or misappropriated such clients funds.

254. Through his conversion or misappropriation of client funds, the respondent is engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

255. The foregoing conduct of the respondent establishes grounds for discipline as provided for in C.R.C.P. 251.5 and violates Colo. RPC 8.4(c).

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XVIII**

**[A Lawyer Shall Act With Reasonable Diligence and Promptness in  
Representing a Client -- Colo. RPC 1.3]**

256. Paragraphs 204 through 242 are incorporated herein as if fully set forth.

257. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

258. The respondent failed to act with reasonable diligence and promptness in the Steeds' case by failing to provide the agreed-upon legal services to the Steeds, including the updates to their trusts, and completing a trust for their daughter.

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

260. The respondent's lack of diligence and promptness caused injury or potential injury to the clients.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XIX**  
**[Communications - Colo. RPC 1.4(a)]**

263. Paragraphs 204 through 242 are incorporated herein as if fully set forth.

264. Colo. RPC 1.4(a) provides that a lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

265. This respondent failed to comply with this duty of communication in the following respects:

- a. By failing to keep the Steeds reasonably informed about the status of their matter;
- b. By failing to promptly comply with the Steeds' reasonable requests for information; and
- c. By ceasing all communication with the clients.

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

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

267. The respondent's pattern and practice of failing to communicate with the clients caused injury or potential injury to the client.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XX**

**[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)]**

270. Paragraphs 204 through 242 are incorporated herein as if fully set forth.

271. Colo. RPC 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's 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.

272. The respondent effectively terminated the attorney-client relationship by failing to communicate with the Steeds despite their numerous attempts to communicate with the respondent, and by failing to take any other action on behalf of the clients.

273. The respondent failed to return to the Steeds any portion of the \$1,000 retainer, none of which had been earned.

274. The respondent failed to return to the Steeds documents belonging to them; the documents were only returned when OARC returned them to the Steeds.

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

WHEREFORE, the complainant prays at the conclusion hereof.

**Betty Montgomery, case no. 09-01860**

276. Betty Montgomery and her husband hired the respondent in December 2007 to create a trust for them.

277. As part the agreement, the respondent was going to fund the trust.

278. The respondent advised that the trust would cost \$4,000, and they needed to pay \$2,000 up front.

279. Montgomery paid the respondent \$2,000.

280. At their second meeting with the respondent on December 27, 2007, Montgomery paid the respondent the remaining \$2,000.00.

281. Montgomery's husband died on September 15, 2008.

282. Montgomery contacted the respondent and advised of her husband's death, and that Montgomery had a buyer for her husband's car.

283. The respondent had the title to the car.

284. The respondent advised Montgomery he would have to have Montgomery sign a document in order to get her husband's name off the title, and he would bring the requisite document to Canon City for her to sign.

285. The respondent set up an appointment to meet with Montgomery for September 29, 2008, but he canceled the appointment.

286. The respondent set up another appointment for September 30, 2008, but canceled that appointment as well.

287. A third appointment was set for October 2, 2008 which the respondent kept, but he forgot to bring his notary stamp to notarize the paper to clear up the title.

288. The respondent advised Montgomery he would go back to his office and get his notary stamp and get it in the mail to her that evening.

289. Montgomery did not receive anything from the respondent by mail.

290. Montgomery tried to call the respondent.

291. His voicemail stated he was dealing with a family emergency.

292. After several days, the respondent contacted Montgomery and said he had sent the document by mail.

293. Montgomery did not receive anything from the respondent by mail.

294. The respondent later advised Montgomery the mail was returned to him.

295. The respondent advised Montgomery he would take the paper directly to the buyer, which he did.

296. Thereafter, the buyer met with Montgomery at her home and advised that the respondent never notarized the paper and the buyer still could not get the title transferred to his name.

297. Montgomery took the paper to her bank, where it was notarized.

298. Montgomery met with the respondent in January 2009 to sign papers due to her husband's death.

299. The respondent had prepared a trust for Montgomery and her husband.

300. The respondent advised Montgomery he had to make another trust for her and it would cost \$1,000.

301. He requested Montgomery pay him \$500.00 up front.

302. When Montgomery questioned if another trust was necessary, and why the respondent could not just amend the previously created trust, the

respondent explained the original trust included language concerning Montgomery going to a nursing home.

303. It did not make sense to Montgomery that the original trust included this language for her, as her husband was ill, not Montgomery.

304. Montgomery paid the respondent \$1,000 for her trust.

305. Montgomery understood the respondent would fund the trust.

306. The respondent provided the trust to her.

307. Montgomery met with the respondent again in January 2009.

308. The respondent advised he had to file papers at the court, but did not advise what he had to file.

309. Montgomery's bank contacted her and notified her they were unable to change the name on her account for the trust, as it was a joint account with Montgomery's sons.

310. The respondent explained he would do some checking and get back to her.

311. The respondent never followed up with Montgomery.

312. Montgomery was unable to get in touch with the respondent despite her numerous attempts to contact him by phone.

313. In October 2009, the respondent provided client files to OARC, which included a green notebook entitled "Estate Planning Portfolio" for George Wayne Montgomery and Betty Anne Montgomery.

314. OARC provided the notebook to Montgomery.

315. Although the respondent completed Montgomery's trust, Montgomery has no evidence the respondent funded the trust.

#### **CLAIM XXI**

**[A Lawyer Shall Act With Reasonable Diligence and Promptness in Representing a Client -- Colo. RPC 1.3]**

316. Paragraphs 276 through 315 are incorporated herein as if fully set forth.

317. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

318. The respondent failed to act with reasonable diligence and promptness in Montgomery's case by failing to promptly resolve the issue regarding title to the car, by failing to follow up with Montgomery regarding the issue of her bank account, and by failing to provide confirmation to Montgomery as to whether the trust had been funded.

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

320. The respondent's lack of diligence and promptness caused injury or potential injury to the client.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XXII**

**[Communications - Colo. RPC 1.4(a)]**

323. Paragraphs 276 through 315 are incorporated herein as if fully set forth.

324. Colo. RPC 1.4(a) provides that a lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client

expects assistance not permitted by the Rules of Professional Conduct or other law.

325. This respondent failed to comply with this duty of communication in the following respects:

- a. By failing to keep Montgomery reasonably informed about the status of her matter;
- b. By failing to promptly comply with Montgomery's reasonable requests for information; and
- c. By ceasing all communication with the client.

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

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

327. The respondent's pattern and practice of failing to communicate with the client caused injury or potential injury to the client.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XXIII**

**[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)]**

330. Paragraphs 276 through 315 are incorporated herein as if fully set forth.

331. Colo. RPC 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's 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.

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

333. There is no evidence the respondent funded the trust; accordingly, the respondent did not earn the \$1,000 Montgomery paid to have the respondent create a trust for her.

334. The respondent failed to return to Montgomery any portion of the \$1,000 retainer she paid for the amended trust, not all of which had been earned.

335. The respondent failed to return to Montgomery documents belonging to her; the documents were only returned to Montgomery when OARC returned them to her.

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

WHEREFORE, the complainant prays at the conclusion hereof.

**Susan Dickinson-Seufer, case no. 09-02301**

337. Susan Dickinson-Seufer ("Ms. Seufer") hired the respondent in October 2007 to complete a trust for her.

338. Ms. Seufer paid the respondent \$4,000 by credit card.

339. Two month's later, Ms. Seufer's ex-husband, Tommy Seufer ("Mr. Seufer"), decided to hire the respondent to complete a trust for him.

340. It was agreed that the respondent would charge Mr. Seufer the "discounted" rate of \$2,000 for a trust.

341. The Seufers understood the respondent would fund the trusts.

342. The trust work was completed, but Ms. Seufer had hip surgery and developed an infection thereafter.

343. Accordingly, in 2008, neither Ms. Seufer nor Mr. Seufer made efforts to follow up with the respondent regarding their trust documents.

344. In early 2009, Ms. Seuffer and Mr. Seuffer met with the respondent, at which time they signed the trust documents.

345. They did not receive copies of the trusts, however.

346. Thereafter, they were unable to get in touch with the respondent, despite attempting to contact him by telephone and email.

347. In October 2009, the respondent provided client files to OARC, which included trust documents for Ms. Seuffer and Mr. Seuffer.

348. OARC returned the trust documents to Ms. Seuffer.

349. Upon reviewing the documents, Ms. Seuffer determined the trusts were not complete.

350. The respondent failed to transfer assets into the trusts, including eleven parcels of property that were supposed to be transferred into Ms. Seuffer's trust, and annuities that were supposed to be transferred into Mr. Seuffer's trust.

351. In addition, the trusts were not accurate.

352. The respondent failed to delineate how the assets would be distributed, which Ms. Seuffer and Mr. Seuffer had specifically requested.

353. The respondent did not include copies of the documents for the assets that were to be transferred into the trust.

354. Accordingly, while Ms. Seuffer wants to meet with a new lawyer to address her concerns regarding the respondent's work, she does not have the documents she needs to take to a new lawyer.

#### **CLAIM XXIV**

#### **[A Lawyer Shall Act With Reasonable Diligence and Promptness in Representing a Client -- Colo. RPC 1.3]**

355. Paragraphs 337 through 354 are incorporated herein as if fully set forth.

356. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

357. The respondent failed to act with reasonable diligence and promptness by failing to accurately complete the Seuffers' trusts and by failing

to provide confirmation to the Seufers as to whether their trusts had been funded.

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

359. The respondent's lack of diligence and promptness caused injury or potential injury to the client.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XXV**

**[Communications - Colo. RPC 1.4(a)]**

362. Paragraphs 337 through 354 are incorporated herein as if fully set forth.

363. Colo. RPC 1.4(a) provides that a lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

364. The respondent failed to comply with his duty of communication in the following respects:

- a. By failing to keep the Seufers reasonably informed about the status of their matters;
- b. By failing to promptly comply with the Seufers' reasonable requests for information; and
- c. By ceasing all communication with the clients.

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

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

366. The respondent's pattern and practice of failing to communicate with the Seufers caused injury or potential injury to the clients.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

#### **CLAIM XXVI**

**[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)]**

369. Paragraphs 337 through 354 are incorporated herein as if fully set forth.

370. Colo. RPC 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's 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.

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

372. The respondent did not accurately complete the trusts and did not fund the trusts; therefore, he did not earn the entire \$6,000. The respondent has failed to refund any of the funds.

373. The respondent failed to return documents for the assets that were to be transferred into the trusts.

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

WHEREFORE, the complainant prays at the conclusion hereof.

**Robert Mathews, case no. 09-01676**

375. Robert Mathews ("Mathews") hired the respondent on March 3, 2008 to set up a trust and will for Mathews.

376. Mathews signed a fee agreement, which provided for a flat fee of \$4,000.00.

377. Mathews paid the respondent \$2,000 up front.

378. At a subsequent meeting, when Mathews reviewed the documents with the respondent, he found numerous errors.

379. The respondent kept the documents to make corrections.

380. Mathews did not receive copies of the documents.

381. Mathews paid the respondent the remaining \$2,000.00.

382. Mathews met with the respondent twice thereafter.

383. The respondent did not have the trust documents or the will. The respondent had Mathews sign a request for a tax ID number from the IRS.

384. Mathews received the following documents from the respondent: general durable power of attorney, authorization for release of protected health information, and healthcare power of attorney, which were all signed and witnessed on March 8, 2008.

385. Mathews met with the respondent on February 9, 2009 at which time the respondent was supposed to have everything corrected.

386. The respondent advised he was having computer problems and would have to re-schedule the meeting for March 10, 2009.

387. The respondent re-scheduled the March 10 meeting to March 12, 2009.

388. At that time, the respondent still did not have everything completed.

389. The respondent agreed to bring everything to Mathews' home on March 17, 2009.

390. The respondent canceled the March 17, 2009 meeting.

391. Mathews attempted to get in touch with the respondent thereafter by telephone, but the respondent would not return his calls.

392. In October 2009, the respondent provided client files to OARC, which included a green notebook entitled "Estate Planning Portfolio" for Robert Mathews and a file folder with documents belonging to Mathews.

393. OARC provided these documents to Mathews.

394. Mathews was concerned the work was not complete or reliable; Mathews hired new counsel to do the work.

**CLAIM XXVII**

**[A Lawyer Shall Act With Reasonable Diligence and Promptness in Representing a Client -- Colo. RPC 1.3]**

395. Paragraphs 375 through 394 are incorporated herein as if fully set forth.

396. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

397. The respondent failed to act with reasonable diligence and promptness in the Mathews case by failing to promptly correct the errors in the trust, and by failing to provide the corrected trust to Mathews.

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

399. The respondent's lack of diligence and promptness caused injury or potential injury to the client.

400. The respondent's pattern and practice of failing to accomplish his professional tasks for Mathews, coupled with the failure to communicate with

Mathews, constitutes abandonment of the professional responsibilities owed to the client. The totality of facts demonstrates that the respondent effectively deserted, rejected and/or relinquished the professional responsibilities owed to the client.

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XXVIII**  
**[Communications - Colo. RPC 1.4(a)]**

402. Paragraphs 375 through 394 are incorporated herein as if fully set forth.

403. Colo. RPC 1.4(a) provides that a lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

404. This respondent failed to comply with his duty of communication in the following respects:

- a. By failing to keep Mathews reasonably informed about the status of his matter;
- b. By failing to promptly comply with Mathews' reasonable requests for information; and
- c. By ceasing all communication with the client.

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

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

406. The respondent's pattern and practice of failing to communicate with the client caused injury or potential injury to the client.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XXIX**

**[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)]**

409. Paragraphs 375 through 394 are incorporated herein as if fully set forth.

410. Colo. RPC 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's 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.

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

412. The respondent failed to return to Mathews documents belonging to him; the documents were only returned when OARC returned them to Mathews.

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

WHEREFORE, the complainant prays at the conclusion hereof.

**Robert Bennett, case no. 09-01559**

414. Robert Bennett and his wife ("the Bennetts") hired the respondent in November 2008 to assist them with issues regarding their state taxes.



415. The Bennetts signed a written fee agreement with the respondent that provided the respondent would bill at an hourly rate of \$350, and that the respondent would provide legal representation for a State of Colorado capital gains controversy, tax opinion letter in regard to Colorado taxation of Florida capital gain from sale of Florida residence, and ancillary issues.

416. The Bennetts paid the respondent \$1,000, in two separate payments of \$500 on November 11, 2008 and December 6, 2008.

417. The respondent advised that he would contact the State of Colorado regarding the tax issues.

418. The respondent contacted Ann Swenson ("Swenson") at Spectra Services.

419. Swenson had prepared the Bennetts' taxes for the years in question.

420. The respondent advised that he had determined the Bennetts had incurred penalties and interest based on Swenson's error.

421. Swenson disputed the respondent's conclusion.

422. Swenson advised the respondent that if he could demonstrate why her conclusion regarding the taxes was inaccurate, she would be willing to pay the penalties and interest.

423. Swenson did not hear from the respondent again.

424. The Bennetts tried to communicate with the respondent numerous times after April 2009, but he did not respond.

425. Bennett contacted Swenson directly when he was unable to get in touch with the respondent.

426. In an effort to resolve the matter, Swenson agreed to pay the penalties and interest.

427. Swenson paid the penalties and interest.

428. In October 2009, the respondent provided documents to OARC, including real estate documents belonging to the Bennetts.

429. OARC provided the documents to the Bennetts.

**CLAIM XXX**  
**[Communications - Colo. RPC 1.4(a)]**

430. Paragraphs 414 through 429 are incorporated herein as if fully set forth.

431. Colo. RPC 1.4(a) provides that a lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

432. The respondent failed to comply with his duty of communication in the following respects:

- a. By failing to keep the Bennetts reasonably informed about the status of their matter;
- b. By failing to promptly comply with the Bennetts' reasonable requests for information; and
- c. By ceasing all communication with the Bennetts.

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

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

434. The respondent's pattern and practice of failing to communicate with his clients caused injury or potential injury to the clients.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XXXI**

**[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)]**

437. Paragraphs 414 through 429 are incorporated herein as if fully set forth.

438. Colo. RPC 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's 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.

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

440. The respondent agreed to contact the State of Colorado on the Bennetts behalf; he failed to do so.

441. Accordingly, he did not earn the entire \$1,000 the Bennetts paid him.

442. The respondent failed to return to the Bennetts any portion of the \$1,000 retainer, not all of which had been earned.

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

WHEREFORE, the complainant prays at the conclusion hereof

**Sandra Campbell, case no. 09-01602**

444. Sandra Campbell ("Campbell") and her husband James Campbell own Colorado Retirement Resources ("CRR").

445. The respondent shared office space with CRR.

446. In July 2008, when the respondent stopped office-sharing, he provided a check to CRR for \$200.00 for rent he owed.

447. He explained he was having financial problems, so Campbell did not attempt to cash the check.

448. Campbell periodically called the bank to determine if funds were in the account to cover the check; there never were.

449. On April 20, 2009, Campbell met with the respondent to discuss having the respondent assist Campbell's son with getting a warrant quashed.

450. Campbell's son had missed a court date resulting in the warrant issuing.

451. The respondent agreed to assist with the warrant.

452. He explained he was leaving town the following day, but would take care of it.

453. The following day Campbell called the respondent's cell phone to follow up regarding the warrant.

454. Campbell left two messages.

455. The respondent did not return the calls.

456. The following day, when Campbell tried to contact the respondent, she was unable to leave a voicemail because his mailbox was full.

457. Campbell hired another attorney to assist her son with the warrant.

458. On April 21, 2009, Campbell attempted to cash the check for back rent.

459. The check was returned to Campbell due to insufficient funds.

**CLAIM XXXII**

**[A Lawyer Shall Act With Reasonable Diligence and Promptness in  
Representing a Client -- Colo. RPC 1.3]**

460. Paragraphs 444 through 459 are incorporated herein as if fully set forth.

461. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

462. The respondent failed to act with reasonable diligence and promptness in Campbell's son's case by failing to take any action regarding the warrant, as he agreed to do.

463. The respondent knew or should have known that he failed to act with diligence and promptness when the client's matter necessitated the respondent taking immediate action to quash the warrant.

464. The respondent's lack of diligence and promptness caused injury or potential injury to the client.

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

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

WHEREFORE, the complainant prays at the conclusion hereof.

**CLAIM XXXIII**

**[Communications - Colo. RPC 1.4(a)]**

467. Paragraphs 444 through 459 are incorporated herein as if fully set forth.

468. Colo. RPC 1.4(a) provides that a lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

469. The respondent failed to comply with his duty of communication in the following respects:

- a. By failing to keep Campbell reasonably informed about the status of her son's matter; and
- b. By failing to promptly comply with Campbell's reasonable requests for information.

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

470. The respondent knew or should have known that he had failed to communicate adequately with Campbell or her son.

471. The respondent's pattern and practice of failing to communicate with Campbell caused injury or potential injury to Campbell's son.

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

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

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

DATED this 5<sup>th</sup> day of February, 2010.

Respectfully submitted,

April M. McMurrey  
April M. McMurrey, #34194  
Assistant Regulation Counsel  
John S. Gleason, #15011  
Regulation Counsel  
Attorneys for Complainant

## Statement of Costs

Michael J. Reed

09PDJ014-etal

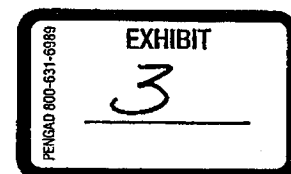
09PDJ054-etal

09PDJ082-etal

10PDJ011

4/4/2009	Professional Medical Services	1,750.00
11/16/2009	Professional Medical Services	2,362.50
12/8/2009	Transcript Copying Fee	109.60
6/18/2010	Administrative Fee	<u>91.00</u>

Amount Due \$ 4,313.10



## CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 9, 2010, I deposited a true copy of the following document(s):

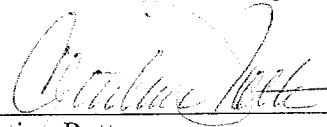
### STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:  
  
MICHAEL JOHN REED  
13440 CAYUGA DR  
POWAY, CA 92064
- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- ☐ by overnight mail at , California, addressed as follows:
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.
- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Dane C. Dauphine, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 9, 2010.

  
Cristina Potter  
Case Administrator  
State Bar Court