

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 1300 Broadway, Suite 250 Denver, Colorado 80203</p>	<p>FILED</p> <p>November 21, 2023</p> <p>Presiding Disciplinary Judge Colorado Supreme Court</p>
<p>Complainant: THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondent: ZACHARIAH C. CRABILL, #56783</p>	<p>▲ COURT USE ONLY ▲</p> <p>Case Number: 23PDJ067</p>
<p>Justin P. Moore, #32173 Assistant Regulation Counsel Attorney for Complainant 1300 Broadway, Suite 500 Denver, Colorado 80203 Telephone: (303) 928-7835 Email: j.moore@csc.state.co.us</p> <p>Arthur Joel Kutzer, # 18878 Respondent's Counsel 3900 E Mexico Avenue Ste. 700 Denver, CO 80210 Telephone: 303-320-0509 Email: AKutzer@sgrllc.com</p>	
<p>STIPULATION TO DISCIPLINE PURSUANT TO C.R.C.P. 242.19</p>	

On this 21st day of November, 2023, Justin P. Moore, Assistant Regulation Counsel and attorney for the complainant, Zachariah C. Crabill, the Respondent who is represented by attorney Arthur J. Kutzer in these proceedings, enter into the following Stipulation to Discipline pursuant to C.R.C.P. 242.19 ("Stipulation") and submit the same to the Presiding Disciplinary Judge for his consideration.

RECOMMENDATION:

One year and a day suspension, all but 90 days stayed upon successful completion of a two-year period of probation.

1. Respondent has taken and subscribed to the oath of admission, was admitted to the bar of this Court on October 28, 2021, and is registered as an attorney upon the official records of this Court, registration no. 56783. Respondent is subject to the jurisdiction of this Court and the Presiding Disciplinary Judge in these proceedings.

2. 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 Respondent's personal decision, and Respondent affirms there has been no coercion or other intimidating acts by any person or agency concerning this matter.

3. This matter **has not** become public under the operation of C.R.C.P. 242.41 as amended. However, Respondent specifically acknowledges that, if the Presiding Disciplinary Judge should decide to accept this Stipulation, and impose the agreed-to discipline contained herein, then this Stipulation and the discipline imposed will be matters of public record. *See* C.R.C.P. 242.41(a)(2).

4. 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. Respondent acknowledges the right to a full and complete evidentiary hearing on the above-referenced complaint. At any such hearing, Respondent would have the right to be represented by counsel, present evidence, call witnesses, and cross-examine the witnesses presented by Complainant. At any such formal hearing, 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, Respondent waives that right.

5. Respondent and Complainant specifically waive the right to a hearing pursuant to C.R.C.P. 242.30.

6. Respondent and Complainant stipulate to the following facts and conclusions:

a. Respondent was licensed to practice law in Colorado in 2021, Respondent is not licensed elsewhere. After he was licensed, Respondent worked as a prosecutor in the 4th Judicial District Attorney's Office for one year.

b. In early 2023, Respondent went to work for Baker Law Group ("the firm").

c. Around this same time, Respondent experienced significant personal issues and circumstances leading up to the events discussed herein. His brother died by suicide the day before he was supposed to start at Baker Law Group. He lost his mother in the year before. Additionally, Respondent's wife was pregnant in 2023.

d. Respondent struggled working at Baker Law Group. His supervisor left shortly after he started and there was generally a high level of turnover within the office. Respondent found the amount of work and working in an area of law that was new to him to be significant challenges.

O.C. case

e. Respondent and the firm were retained to attempt to set aside an order of summary judgment that had been entered against their client, O.C. (prior to the firm's retention). While *pro se*, O.C. had failed to respond to a summary judgment motion that opposing counsel had filed in a civil case involving a vehicle (including conversion, civil theft, unjust enrichment, and others).

f. On December 30, 2022, the court entered a \$31,350 judgment against O.C.

g. O.C. signed a fee agreement with the firm on April 13, 2023. Respondent entered his appearance and began working on a motion to set aside the judgment ("MSA").

h. Respondent had never drafted a MSA. He went through past motions from the firm and sought to find templates for making an argument to set aside the judgment. Respondent claims he worked about 6.5 hours doing so. Respondent says he used the templates (including case law), changing names and facts. Respondent describes that cases were "baked in" within the motions/pleadings he reviewed. Respondent reports he "imagines" he reviewed case law himself, though he did not provide any case citations he reviewed.

i. After writing an initial draft of the motion, Respondent determined he wanted to "bolster" the legal authorities he cited.

j. Respondent had received information in late April about ChatGPT. He practiced with the technology in April and thought it might be helpful. He reported he tested out the technology and checked the results by using internet research tools.

k. For this matter, Respondent used ChatGPT to address the concept of setting aside the judgment in the case at issue. Respondent describes that the motion was taking a long time and that this was an effort to use the [client's] funds efficiently, as well as reduce his own stress.

l. Respondent's search on ChatGPT led him to what appeared to be cases that supported his client's position. At the time he utilized ChatGPT, Respondent was close to the deadline for filing this motion. Respondent describes that he had "tunnel vision."

m. Respondent did not read the cases he found through ChatGPT, nor did he key cite, shepardize, or otherwise take steps to verify their accuracy.

n. Respondent added the case law from ChatGPT to his MSA and on May 1, 2023 sent the draft to his paralegal and Mr. Harper, Respondent's then acting supervisor.

o. Respondent filed the MSA on the evening of May 4, 2023.

May 5, 2023

p. O.C.'s case was set for hearing on May 5, 2023. That morning, before the hearing, as he was preparing for the hearing, Respondent realized that some of the cases cited in the MSA he filed might not be accurate and/or might not exist. He engaged in the following text exchange with his paralegal:

10:02 Respondent: I think all of my case cites from ChatGPT are garbage...I can't even find the cases in Lexis.

10:03 Paralegal: Did you not check them after it gave them to you?

10:03 Respondent: no. like an idiot.

10:12 Paralegal: Are you going to withdraw it?

10:12 Respondent: I have no idea what to do. I am trying to find actual case law in our favor now to present to the judge. I don't have time for this...

q. Respondent did not speak with any attorney, or seek advice from an attorney when he learned of the problems with the cases he had cited.

r. Respondent appeared at the hearing which began at approximately 11:09 a.m. He did not immediately raise the problem with the citations with the court. Instead, the court raised the concerns with Respondent.

s. Judge Eric Bentley presided over the hearing and informed Respondent that he reviewed the motion and expressed concerns about the accuracy of the law Respondent cited.

t. Respondent responded, "for candor towards the tribunal, that was my experience this morning as well and I apologize for the incorrect case citing. I leaned a little too heavily on a legal intern in this case, who I believe got some mistake in case cites, so I apologize for that. I - I will remedy those, so I apologize for that."

u. Respondent's statements about relying on a legal intern were not true.

v. Respondent concedes that he panicked and that what he said to the court was not accurate. Respondent recognizes it was his obligation to withdraw the pleading and be forthright about what had happened. Respondent says that he was not trying to escape culpability as much as he was trying to escape embarrassment.

Affidavit

w. Respondent prepared and filed an affidavit on May 11, 2023. Within the affidavit, he referenced Artificial Intelligence (AI) technology and explained when he first discovered it and how he used it for the motion.

x. Respondent mentioned his lack of experience with legal research and writing and the desire for efficiency as explanations for his decision to rely on ChatGPT.

y. Respondent provided example searches/results to explain his confidence in the technology. Based on the prior results, he explained, "it never dawned on me that this technology could be deceptive."

z. He said, "[i]t wasn't until the morning of the Show Cause Hearing on 5/5 that I, in an effort to prepare to argue the case law cited, dug deeper to realize the inaccuracies of the citations."

aa. Respondent professed in the affidavit to be unaware of what to do in the situation and explained that he did not recognize his ability and obligation to withdraw the motion due to inaccuracies. Respondent cited Rule 3.3 within his affidavit.

bb. Respondent also apologized to the court.

Post-May 11, 2023

cc. On May 11, 2023, Respondent filed another Motion for Relief from Summary Judgment on May 11, 2023, including proper citations and the correct standard for relief from judgment as addressed by the court during the May 5, 2023 Hearing. The court denied the subsequent Motion as well on May 12, 2023.

dd. In denying the Motion, the court stated: "The Court notes that it did not deny the motion on the ground that fictitious case citations had been submitted; rather, the Court applied the correct excusable neglect standard and found that the facts alleged in the motion failed to meet that standard."

ee. Respondent subsequently filed a Motion for Turnover, as requested by the court during the May 5, 2023 Hearing. The court granted the Plaintiff's Motion on June 23, 2023. Respondent filed a Motion to Withdraw from the case on June 9, 2023, which was granted.

ff. Through Respondent's conduct described above, Respondent has engaged in conduct constituting grounds for the imposition of discipline pursuant to C.R.C.P. 242.9. Respondent has also violated Colo. RPC 1.1, 1.3, 3.3(a)(1) and 8.4(c).

7. Pursuant to C.R.C.P. 242.19(b)(4), Respondent agrees to pay costs in the amount of \$224 (a copy of the statement of costs is attached hereto as Exhibit 1) incurred in conjunction with this matter within thirty-five (35) days after acceptance of the Stipulation by the Presiding Disciplinary Judge, made payable to Colorado Supreme Court Attorney Regulation Offices. Respondent agrees that statutory interest shall accrue from thirty-five (35) days after the Presiding Disciplinary Judge accepts this Stipulation. Should Respondent fail to make payment of the aforementioned costs within thirty-five (35) days, Respondent specifically agrees to be responsible for all additional costs and expenses, such as reasonable attorney fees and costs of collection incurred by Complainant in collecting the above stated amount. 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 Respondent's default on the payment.

8. This Stipulation represents a settlement and compromise of the specific claims and defenses pled by the parties, and it shall have no meaning or effect in any other lawyer regulation case involving another respondent attorney.

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 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 Respondent in conjunction with this offer to accept discipline of a one year and one day suspension, all but 90 days stayed upon successful completion of a two-year probationary period may be subsequently used. If the Stipulation is rejected, then the matter will be heard and considered pursuant to C.R.C.P. 242.30.

10. The Office of Attorney Regulation Counsel has notified or will notify shortly after the parties sign this agreement, the complaining witness(es) in the matter(s) of the proposed disposition.

11. The parties have not agreed to any restitution as part of this case.

12. Respondent's counsel hereby authorizes Respondent 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 which may arise.

PRIOR DISCIPLINE

13. None.

ANALYSIS OF DISCIPLINE

14. The American Bar Association *Standards for Imposing Lawyer Sanctions* (1991 and Supp. 1992) (“ABA Standards”) are recognized by the Colorado Supreme Court as the guiding authority for selecting the appropriate sanction to impose for lawyer misconduct. See *In re Rouse*, 69 P.3d 43, 46-47 (Colo. 2003) (citing *In re Attorney D*, 57 P.3d 395, 399 (Colo. 2002)). As the Colorado Supreme Court has stated,

The ABA Standards were created as a model system of sanctions, designed to achieve greater consistency in the sanctioning of attorney misconduct while at the same time leaving room for ‘flexibility and creativity in assigning sanctions in particular cases of lawyer misconduct.’ (citing ABA Standards, Preface (2005)). Flexibility and discretion are built into the ABA Standards’ two-step framework for determining the appropriate sanction. See ABA Standards, Theoretical Framework; ABA Standard 3.0 & cmt... [T]his framework is ‘not designed to propose a specific sanction for each of the myriad of fact patterns in cases of lawyer misconduct,’ but rather is designed to ‘give courts the flexibility to select the appropriate sanction in each particular case.’ (citing ABA Standards, Theoretical Framework)

Matter of Attorney F, 285 P.3d 322, 326 (Colo. 2012); see also ABA Standard 1.3 cmt. (“While these standards set forth a comprehensive model to be used in imposing sanctions, they also recognize that sanctions imposed must reflect the circumstances of each individual lawyer, and therefore provide for consideration of aggravating and mitigating circumstances in each case.”).

The Court has also stated, “individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases.” *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008).

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:

Respondent violated his duty to his client, including to act with competence and diligence. Respondent violated his duty to the court and legal profession, including to act with honesty and candor.

b. The lawyer’s mental state:

Respondent acted negligently in relying on ChatGPT for citations. Respondent acted knowingly in failing to immediately withdraw his motion and making misrepresentations to the court.

c. The actual or potential injury caused by the lawyer's misconduct:

Respondent caused actual or potential harm to the proceedings, the reputation of lawyers, the legal profession and the orderly administration of justice. Respondent's conduct created the potential for harm to his client.

d. Presumptive Sanction:

ABA Standard 6.12 provides that suspension is appropriate when a lawyer knows that false statements or documents are submitted to the court but takes no remedial action, causing injury or potential injury to a party or causing an adverse or potentially adverse effect on the legal proceeding.

ABA Standard 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

ABA Standard 4.54 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter, and causes little or no actual or potential injury to a client.

15. The existence of aggravating or mitigating factors:

The parties stipulate that the following aggravating factors apply:

(b) dishonest or selfish motive – Respondent was dishonest with Judge Bentley when he was asked about the citations in his motion and he misrepresented that a legal intern was to blame for the inaccurate citations. Respondent states his motive was to escape embarrassment. At a minimum, his motive was selfish.

(d) multiple offenses – As noted above, Respondent engaged in two separate acts – 1) not correcting the citations and/or withdrawing the pleading; and 2) misrepresenting that a legal intern was to blame for the inaccurate citations.

The parties stipulate that the following mitigating factors apply:

(a) absence of a prior disciplinary record;

(c) personal or emotional problems – Respondent was going through a series of emotional things in his life, and felt significant pressure at work;

(d) timely good faith effort to make restitution or to rectify consequences of misconduct – Respondent explained what had happened six days after the hearing in the affidavit filed with the court;

(e) cooperative attitude toward proceedings—Respondent has been cooperative through the course of these proceedings;

(f) inexperience in the practice of law – Respondent was licensed in 2021 and worked only briefly in the legal profession before this conduct occurred;

(g) character or reputation – Respondent presented evidence through character letters of his otherwise good character;

(l) remorse – Respondent has expressed remorse for his conduct.

16. Case law

In *In re Roose*, 69 P.3d 43 (Colo. 2003), the lawyer was suspended for a year and a day for conduct that included knowingly making a false statements of fact in an appeal that he was court-appointed counsel. As the Court stated, “In the absence of a finding of intent to obtain a benefit by disobeying the district court’s order or to deceive the court of appeals, the appropriate sanction for both knowingly submitting materially false statements and knowingly violating a court order, as long as those acts caused at least some injury to a party or adverse effect on the legal proceeding, is suspension.” *Id.* at 49. The analysis of aggravating and mitigating factors from *Roose* is relevant.

Roose’s conduct is mitigated by her inexperience in the practice of law, her lack of any prior disciplinary record, and the fact that she has already been held in contempt and punished by the district court. Perhaps as importantly, despite her conduct being misguided, there is no suggestion that it was motivated by self-interest or self-aggrandizement. See ABA Standards 9.22(b) and 9.32(b) (listing dishonest or selfish motive as an aggravating or mitigating factor). Furthermore, to the extent that her violations could be considered a pattern of misconduct or the commission of multiple offenses, they actually involved only two separate acts, arising from the same lack of understanding, and the same misguided perception of zealous advocacy, in the same case.

Id.

Under Colorado case law and Colo. RPC 3.3(a)(1), failure to disclose material information to a tribunal is the equivalent of making a false statement of material fact. See *In re Fisher*, 202 P.3d 1186, 1202 (Colo. 2009); Colo. RPC 3.3, cmt. 3. Materiality, under Colo. RPC 3.3, is not directed by the outcome of a particular matter, but rather whether there is potential that the information *could* influence a determination as to that matter. *Fisher*, 202 P.3d at 1202.

There are a plethora of cases in which lawyers have been suspended for knowingly making false statements of fact or law and/or failing to correct false information after learning of the falsity. See, e.g., *In re Carthvell*, 50 P.3d 897 (Colo. 2002) (lawyer suspended for three years, all but 18 months stayed, for conduct that included failing to disclose that his client was misrepresenting that he had not been convicted of a prior alcohol-related driving offense); *People v. Head*, 332 P.3d 117 (Colo. 2013) (lawyer suspended for one year and a day for misconduct that included submitting false information during a deposition, in violation of Colo.

RPC 8.4(c), that his subpoenaed tax returns were in a missing box and that he claimed \$60,000 on a prior tax return); *People v. Fry*, 501 P.3d 846 (Colo. O.P.D.J. 2021) (lawyer suspended for 18 months for misconduct that included making false statements in a notice of attorney's lien and in a notice of satisfaction of judgment, including about money that was owed to him, and failing to correct the information when the falsity was brought to his attention); *People v. Wotan*, 944 P.2d 1257 (Colo. 1997) (lawyer suspended for one year and one day for conduct that included filing a false certificate); *People v. Barnhouse*, 775 P.2d 545 (Colo. 1989) (lawyer suspended for one year and one day for filing a false financial affidavit in his own dissolution matter, along with other conduct); *People v. Steinman*, 452 P.3d 240 (Colo. 2019) (lawyer suspended for six months, with three months served and the remainder stayed upon successful completion of probation, for failing to disclose his outside work while working as a prosecutor); *People v. Elinoff*, 16PDJ014 (Colo. O.P.D.J. 2016) (lawyer suspended, via stipulation, for 30 days for conduct that included exaggerating the nature of his own medical procedure in an effort to persuade the court to grant a continuance of his trial).

There are still other cases in which lawyers have been publicly censured for dishonest conduct. *See, e.g., People v. Small*, 962 P.2d 258 (Colo. 1998) (lawyer publicly censured, via stipulation, for misconduct that included testifying falsely he had insurance at the time of an automobile accident – the Court noted, “Had the false testimony in this case gone to a dispositive and material fact, however, we would have found a public censure too lenient.”); *People v. Bertagnolli*, 861 P.2d 717 (Colo. 1993) (lawyer publicly censured for conduct that included failing to notify an arbitration board, including during closing arguments, that a witness wished to correct testimony that the witness had offered).

The mental state is important in navigating through these outcomes. In this case, the mental state is knowing and the parties agree suspension is appropriate.

17. Considering all of the factors described above, as applied to this case, a one year and a day suspension, with all but 90 days stayed upon successful completion of a two-year period of probation is an appropriate sanction. Respondent meets the eligibility requirements for probation set forth in C.R.C.P. 242.18(b).

CONDITIONS

18. The Initial, Served Suspension. Respondent must first complete the served portion of this suspension and comply with the requirements imposed by C.R.C.P. 242.32 and the requirements of C.R.C.P. 242.38 or 242.39 that are applicable to the length of this served suspension. Once Respondent has successfully completed the served portion of the suspension (90 days), and is reinstated from that period of suspension by order of the Presiding Disciplinary Judge, then Respondent's probationary period shall begin.

19. Probation. The parties stipulate that Respondent is eligible for probation pursuant to C.R.C.P. 242.18(b). Successful completion of all these terms shall stay the imposition of the remainder of the suspension.

- a. Respondent shall be on probation for a two-year period of time.
- b. **Mandatory Rule Condition.** During the period of probation, Respondent shall not engage in any further violation of the Colorado Rules of Professional Conduct. *See* C.R.C.P. 242.18(c).
- c. Respondent shall attend and successfully pass the one-day ethics school sponsored by the Office of Attorney Regulation Counsel within one year of the date this Stipulation is approved. Respondent shall register and pay the costs of ethics school within thirty-five (35) days of the date this Stipulation is approved. Attendance at ethics school will count as 8 general CLE credits, including 7 ethics credits. Respondent may obtain the registration form for the ethics school on-line at www.coloradosupremecourt.com. Access the website and go to the section for Colorado Lawyers, then Professionalism; the link for Ethics School is in the third paragraph. Access the registration forms by clicking on "Register for an upcoming Ethics School Program." Further instructions for registering are on the registration form.


20. **Violation of Conditions.** If, While Respondent is on probation, the Office of Attorney Regulation Counsel receives information that any condition may have been violated, the Regulation Counsel may file a motion with the Presiding Disciplinary Judge seeking an order that requires the attorney to show cause why the stay on Respondent's suspension should not be lifted. *See* C.R.C.P. 242.18(f). During a revocation proceeding, the Respondent must continue to comply with the probationary conditions unless otherwise ordered. *Id.* Any hearing shall be held pursuant to C.R.C.P. 242.18(f)(3). When, in a revocation hearing, the alleged violation of a condition is Respondent's failure to pay restitution or costs, the evidence of the failure to pay shall constitute prima facie evidence of a violation. *Id.*

21. **Successful Completion of Conditions.** No earlier than twenty-eight (28) days before the period of probation is scheduled to terminate, Respondent must file with the Presiding Disciplinary Judge an affidavit attesting to whether Respondent has complied with each term of probation. *See* C.R.C.P. 242.18(e). Within 14 days of that filing, unless otherwise ordered, Regulation Counsel must file either a notice that the Regulation Counsel does not object to the termination of probation or a motion to revoke probation. *Id.* Upon receiving the notice that the Regulation Counsel does not object to the termination of probation, the Presiding Disciplinary Judge will enter an order terminating. *Id.* The order shall become effective no earlier than the date probation is scheduled to terminate. *Id.*

RECOMMENDATION FOR AND CONSENT TO DISCIPLINE

Based on the foregoing, the parties hereto recommend that a one year and a day suspension, all but 90 days stayed upon successful completion of a two-year period of probation, with conditions as described above, be imposed upon Respondent. Respondent consents to the imposition of discipline of a one year and a day suspension, all but 90 days stayed upon successful completion of a two year period of probation. The parties request that the Presiding Disciplinary Judge order that the effective date of such discipline be **the date of entry of the order.**

Zachariah C. Crabill, Respondent; Arthur J. Kutzer, attorney for Respondent; and Justin P. Moore, 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.


Zachariah C. Crabill
~~1311 Interquest Parkway~~ 821 N. Walnut St.
Colorado Springs, CO ~~80921~~ 80905
Telephone: ~~804-480-0719~~

Respondent

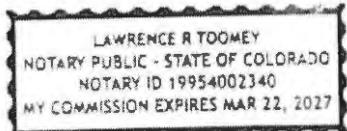
STATE OF COLORADO)

COUNTY OF EL PASO)^{SS:}

Subscribed and sworn to before me this 17 day of Nov, 2023, by ZACHARIAH C. CRABILL, the Respondent.

Witness my hand and official seal.

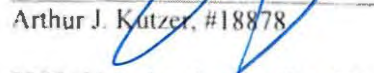
My commission expires: 03-22-2027



s/ Justin P. Moore

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Statement of Costs

**Zachariah Crabill
23-1828**

11/17/2023	Administrative Fee	\$	<u>224.00</u>
	AMOUNT DUE	\$	224.00