

Disciplinary Case Summaries

No. 17PDJ060. People v. Belair. 2/12/2018. Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Varen Craig Belair (attorney registration number 32696), effective March 19, 2018.

Belair was retained by a client to apply for and maintain certain intellectual property patents. Despite his many assurances over the course of years that all the client's applications and patents were in good order, Belair had,

in fact, knowingly neglected the work he had contracted to do yet continued to collect on invoices he issued to the client. By the time the client discovered his mendacity, Belair had converted close to \$100,000 in unearned fees and had caused several of the client's patents to be deemed abandoned. In another matter, Belair refused to pay a vendor who had performed work for him. When disciplinary authorities asked Belair to respond to a request

for investigation, he failed to do so, though he promised he would.

Through this conduct, Belair violated Colo. RPC 1.1 (a lawyer shall competently represent a client); Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a) (a lawyer shall reasonably communicate with the client); Colo. RPC 1.4(b) (a lawyer shall explain a matter so as to permit the client to make informed decisions regarding the representation); Colo. RPC 8.1(b) (a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority); CRCP 251.5(d) (a lawyer must respond to a request from disciplinary authorities); Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Colo. RPC 8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice).

No. 17PDJ078. People v. Donohue. 2/27/2018. The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Jay M. Donohue (attorney registration number 36355) for one year and one day, with nine months served and the remainder stayed upon successful completion of a two-year period of probation, effective February 27, 2018.

Beginning in 2006, three individuals worked together to develop residential real estate in Denver, purchasing older homes and building new residences on the properties. One person procured financing from investors and lenders. The other two were married to each other, and the husband was a licensed real estate agent. The development projects were conducted through various LLCs. The individual operated a development LLC, the married couple operated a second development LLC, and the wife operated a design LLC. Donohue represented the design LLC. The husband and the individual formed LLCs for specific development projects; together, they also operated an LLC known as LVK. Donohue entered into a fee agreement with LVK and required a nonrefundable retainer.

In September 2013, Donohue and the husband discussed investing in real property that was currently under contract with the husband's

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development LLC. Donohue formed his own LLC to facilitate his and his parents' purchase of the property with the husband's LLC. The two LLCs executed a contract for the purchase and development of the property. There was a significant risk that Donohue's representation of LVK and the husband would be materially limited by Donohue's personal interest in his and his family's investment in the real property. Donohue had a conflict of interest between his obligations to the married couple, as their lawyer, and his personal interest in protecting his parent's investment. Donohue never advised the clients about this potential conflict, nor did he obtain the clients' written informed consent to the conflict.

In December 2013, Donohue sent the husband a proposed fee agreement. At the time, Donohue represented LVK, of which the husband was a member. Donohue also had an attorney-client relationship with the wife, who had become a member of LVK. In addition, Donohue's LLC and the husband's development LLC jointly owned property together and intended to form an LLC to develop it. There was a significant risk that Donohue's representation of LVK would be materially limited by his representation of the husband. Donohue did not advise the clients of the potential conflicts, nor did he obtain written informed consent to such conflicts.

Also in December 2013, Donohue attended a meeting with the couple, the individual, and a CPA. At the meeting, Donohue accused the individual of fraud based on the manner in which he had raised funds for certain property-specific LLCs. Donohue later threatened the individual that if he did not relinquish his operational responsibilities and agree to dissolve LVK, Donohue would report him to securities authorities; he also "guaranteed" that his CPA would turn the individual into Colorado regulatory authorities.

Through this conduct, Donohue violated Colo. RPC 1.5(g) (a lawyer shall not charge nonrefundable fees or retainers); Colo. RPC 1.7(a)(2) (a lawyer shall not represent a client if the representation involves a concurrent conflict of interest); and Colo. RPC 4.5(a) (a lawyer shall not threaten criminal, administrative, or

disciplinary charges to obtain an advantage in a civil matter).

No. 18PDJ009. People v. Goldsmith. 3/6/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Ross Paul Goldsmith (attorney registration number 12289) for one year and one day, all stayed upon successful completion of a three-year period of probation, effective March 6, 2018. The conditions of Goldsmith's probation include practice monitoring, individual therapy, monitored sobriety, and participation in a sobriety support group. The parties agreed that Goldsmith suffered from alcohol dependency during the time frame in which his misconduct occurred.

Goldsmith's misconduct spanned four separate client matters. In July 2016, a client asked him to help her respond to her ex-husband's motion to modify child support. Goldsmith received a \$1,000 retainer from the client. Goldsmith's client had trouble communicating with him. The next month, the husband withdrew his motion to modify. During the investigation of his misconduct, Goldsmith procured an invoice showing that his firm incurred \$872.50 in fees. Goldsmith refunded his client the remaining unearned funds.

In September 2016, Goldsmith received a \$1,000 retainer from a client in a civil matter. Goldsmith's client unsuccessfully tried to communicate with him in October and November 2016, but Goldsmith's voicemail was full, and he did not respond to her emails. She requested a return of her documents and a refund. Goldsmith did not return his client's file until July 2017. In November 2017, he sent his client an invoice indicating that she was not owed a balance.

Goldsmith attended a hearing for his client in a worker's compensation matter in August 2016. In October 2016, the administrative law judge (ALJ) sanctioned Goldsmith and his client for her failure to attend three separate psychological examinations. This order was emailed to Goldsmith. He did not receive the order because his email service had been shut off after he failed to pay the bill. Goldsmith did not send the order to his client. His client also

missed an important evaluation because she did not receive notice. Goldsmith later failed to receive notice of an additional court hearing. In January 2017, his client informed the ALJ that she had heard nothing from Goldsmith since August 2016. The ALJ tried to contact Goldsmith but was unsuccessful.

In January 2017, Goldsmith failed to appear before the ALJ in a separate workers' compensation case. The ALJ called Goldsmith, but his number was disconnected. Goldsmith failed to appear at another conference because he did not receive notice, and the ALJ removed him as counsel of record.

Through this conduct, Goldsmith violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a)(3) (a lawyer shall keep a client reasonably informed about the status of the matter); Colo. RPC 1.4(a)(4) (a lawyer shall promptly comply with reasonable requests for information); and Colo. RPC 1.16(d) (a lawyer shall protect a client's interests upon termination of the representation).

No. 16PDJ005. People v. Gregory. 2/7/2018.

On February 7, 2018, the Presiding Disciplinary Judge issued an order granting judgment on the pleadings and disbarred Glenn W. Gregory (attorney registration number 17581) from the practice of law. The disbarment took effect March 14, 2018.

Gregory served as co-trustee of a trust that had been created for the benefit of his step-grandmother. In an Adams County probate matter, a Special Conservator was appointed in 2015 to audit the trust. The Special Conservator found in a preliminary report that Gregory improperly distributed \$1,397,351.78 in payments and transfers from the trust. Based on that matter, a jury in 2017 found Gregory guilty of 13 criminal counts: five counts of at-risk theft—\$500 or more, a class 3 felony; five counts of theft—\$20,000 or more, a class 3 felony; two counts of theft—\$15,000 or more, a class 3 felony; and one count of theft—\$5,000 to \$20,000, a class 5 felony. He was sentenced to eight years in the Department of Corrections.

Through this conduct, Gregory violated Colo. RPC 8.4(b) (a lawyer shall not commit

a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects) and CRCP 251.5(b) (any criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer amounts to grounds for discipline).

No. 17PDJ068. People v. Nesbitt. 3/9/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Arron Burt Nesbitt (attorney registration number 40610) for one year and one day, with nine months to be served and the remainder to be stayed upon successful completion of a two-year period of probation, effective April 13, 2018.

In winter and spring 2016, Nesbitt, a law firm partner, was planning to join another firm. During the time leading up to his departure, he billed various clients for work that he did not

perform. For example, he billed several hours for editing a report that he received from another attorney; that edited report was then sent to the client with few, if any, edits inputted. He billed time for reviewing deposition transcripts and medical records that his firm did not receive until after Nesbitt began working elsewhere. On a few occasions, Nesbitt billed clients for attending depositions, though the deposition transcripts do not reflect his presence at the depositions, nor do call logs show that he monitored the depositions by telephone. Nesbitt recklessly overbilled; he had no incentive or motive to improperly bill for tasks that he did not complete or perform.

Through this conduct, Nesbitt violated Colo. RPC 1.5(a) (a lawyer shall not charge or collect an unreasonable fee) and Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). ^{CL}

These summaries of disciplinary case opinions and conditional admissions of misconduct are prepared by the Office of the Presiding Disciplinary Judge and are provided as a service by the CBA; the CBA cannot guarantee their accuracy or completeness. Full opinions are available on the Office of the Presiding Disciplinary Judge website at www.coloradosupremecourt.com/PDJ/PDJ_Decisions.asp.



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