

Disciplinary Case Summaries

No. 17PDJ090. People v. Boney. 1/2/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Brian Russell Boney (attorney registration number 35667) for six months, all stayed upon the successful completion of a two-year period of probation, effective February 6, 2018.

Boney was hired in February 2016 to assist a client with a child support matter. He received a

retainer of \$1,500. Boney worked a few hours on the case, earning nearly \$700. He later negligently converted a portion of the remaining client funds, which he should have maintained in his trust account. The case was placed on hold while the client's ex-husband was deployed on military duty, but in late November 2016, the client informed Boney that her ex-husband had returned. In response, Boney left a message for the client, saying that he would restart the case

and that he had joined a new firm. He took no further action on the case. From December 20, 2016 through March 2017, Boney was extremely ill. During that period, he failed to respond to a pleading filed by his client's ex-husband. After his health improved, he refunded the client's entire retainer and withdrew from the case. Boney also commingled personal funds and client funds in his trust account and failed to keep required records of his trust account.

Through his negligent conduct, Boney violated 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 1.15A(a) (a lawyer shall hold client property separate from the lawyer's own property); Colo. RPC 1.15C (establishing standards governing lawyers' use of trust accounts); and Colo. RPC 1.15D (a lawyer shall maintain trust account records). The stipulated discipline in this case took into consideration numerous mitigating factors.

No. 17PDJ091. People v. Free. 1/2/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and publicly censured Charles Richard Free (attorney registration number 16476), with the condition that he attend ethics school. The public censure took effect January 2, 2018.

Free was hired to represent a client in two criminal matters and one civil matter. In the civil matter, Free failed to produce certain information that the court had ordered him to produce, did not participate in drafting a trial management order, and did not timely file a witness list or exhibit list. In the ensuing appeal, he did not file the record and he neglected to respond to two show cause orders, resulting in dismissal of the appeal. The client later terminated Free's representation in the criminal matters. Concerned about the implications of returning the case file to the client's wife, as the client had requested, Free did not timely return the file to the client.

Through this conduct, Free violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client) and Colo. RPC 1.16(d) (a lawyer shall protect a client's interests upon termination



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of the representation, including by returning unearned fees and any papers and property to which the client is entitled).

No. 18PDJ001. People v. Johnson. 1/8/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and publicly censured Stephen M. Johnson (attorney registration number 14145), effective February 12, 2018.

In January 2017, Johnson was arrested in Centennial, Colorado. He was initially pulled over for failing to proceed on a green light and for having a defective license plate lamp. After consenting to and failing roadside tests, he was charged with driving under the influence. His blood alcohol content was measured at 0.140.

Johnson pleaded guilty in April 2017 to one count of driving while ability impaired, with one prior alcohol-related driving offense. He was sentenced to 10 days of in-home detention and was placed on 24 months of probation with the conditions of abstinence, a substance abuse evaluation, Level II education and therapy, and 48 hours of useful public service. He self-reported the conviction to disciplinary authorities. Johnson's prior alcohol-related offense occurred in 1988.

Johnson's conduct 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).

No. 17PDJ080. People v. Korrey. 1/17/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct in this reciprocal discipline matter and publicly censured David M. Korrey (attorney registration number 06280). The public censure took effect January 17, 2018.

On July 11, 2017, the Supreme Court of Nevada rejected a hearing panel's recommendation of public censure and suspended Korrey from the practice of law in Nevada for three months, all stayed with a six-month period of probation. Korrey's suspension was premised on the conduct of his paralegal and an acquaintance of the paralegal who from 2005 to 2008 stole checks written to third-party

service providers from Korrey's outgoing mail. The paralegal and his acquaintance had an accomplice from Wells Fargo who helped them open bank accounts to deposit the larger stolen checks. Korrey's paralegal intercepted the request for investigation sent to Korrey from Nevada bar counsel and submitted a falsified response in Korrey's name without authorization.

Once Korrey became aware of the theft, he discovered that his paralegal and his acquaintance had stolen 160 checks, totaling nearly \$500,000. Korrey repaid his clients and the service providers in full and cooperated with Nevada bar counsel. The Supreme Court of Nevada faulted Korrey for giving his employee unfettered access to his office, allowing him to accomplish the theft.

While the Nevada disciplinary case was pending, Korrey's paralegal and his acquaint-

tance pleaded guilty to criminal theft charges. Their pleas contradicted their testimony at Korrey's Nevada disciplinary hearing, where they stated that Korrey participated in the theft.

Korrey is also licensed in Arizona, Michigan, and California. He and the disciplinary authorities in Arizona and Michigan stipulated to public censure in those states for his misconduct.

Korrey's misconduct constituted grounds for reciprocal discipline under CRCP 251.5 and 251.21. The parties stipulated that injustice would result from imposing the same discipline as that imposed in Nevada and agreed to imposition of a public censure in consideration of numerous mitigating factors.

No. 17PDJ034. People v. Miller. 11/30/2017.

A hearing board publicly censured Dan Eldon Miller (attorney registration number 06675), effective January 4, 2018. One hearing board

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member dissented, finding no grounds for discipline.

In 2016, Miller pleaded guilty to a misdemeanor charge of driving under the influence (DUI) in Summit County Court. Although this was his first DUI conviction and he caused no actual harm to himself or others, his conduct carried a risk of serious harm, especially because his blood alcohol content was measured at 0.254. Miller 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). The hearing board did not find clear and convincing evidence that further conditions on Miller's use of alcohol were needed to protect the public.

No. 17PDJ053. People v. Monroe. 1/11/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Marc A. Monroe (attorney registration number 31248) for six months, all stayed subject to the successful completion of a two-year period of probation, with conditions, including regular therapy and practice mentoring should he enter into private practice. The probation took effect January 11, 2018.

Monroe was hired in 2014 to represent a client in a personal injury matter on a contingency fee basis. The same client also hired him on an hourly basis to file a motion to modify child support. Monroe received a \$1,000 retainer from his client for the child support matter. Monroe filed the motion to modify and was ordered to set a hearing, which he failed to do. The motion was denied and the client's case deemed abandoned. Monroe did not notify his client of this development. The client hired new counsel and successfully modified her child support. At the time, Monroe did not refund the unearned fees of \$382.40, but he is currently making efforts to repay his client. Monroe also took no action on the personal injury case, and the statute of limitations expired on his client's claims. Monroe states that he sent his client several letters about her cases but that she did not respond to them. His client, on the other hand, says she regularly tried to communicate with Monroe but was unsuccessful.

From 2015 to 2017, Monroe continually failed to pay money that he owed to a court reporter in another matter, despite being sent five invoices. Monroe has since repaid the court reporter.

Through this conduct, Monroe 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 1.16(d) (a lawyer shall protect a client's interests upon termination of the representation, including by returning unearned fees and any papers and property to which the client is entitled); Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); and Colo. RPC 8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice).

No. 17PDJ085. People v. Reade. 12/21/2017.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Robert Christopher Reade (attorney registration number 29131) for three years, retroactive to June 25, 2014. Reade's reinstatement in Colorado is conditioned on his reinstatement from his suspension in Nevada.

On November 16, 2017, the Supreme Court of Nevada suspended Reade from the practice of law for four years, retroactive to June 25, 2014, the date of his temporary suspension in Nevada. Reade's suspension was premised on his felony conviction of accessory after the fact to money laundering under 18 USC § 3.

Reade's misconduct constituted grounds for reciprocal discipline under CRCP 251.5 and 251.21, which calls for imposition of the same discipline as that imposed in Nevada. A four-year suspension is not available in



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Colorado, however; the longest period of suspension permitted here is three years. Reade was immediately suspended from the practice of law in Colorado on September 16, 2014, and the parties stipulated that Reade's three-year suspension should be retroactive to June 25, 2014.

Through his misconduct, Reade 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).

No. 17PDJ084. People v. Schwartz. 12/22/2017.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and publicly censured Ivan Schwartz (California attorney registration number 153264), effective December 22, 2017.

Schwartz, who is admitted to practice law in California but not Colorado, sought pro hac vice admission in a Montezuma County District Court case to represent a trust and its trustee, Schwartz's father. In his motion requesting pro hac admission, Schwartz disclosed that he had twice been disciplined in California. Opposing counsel objected to Schwartz's admission, and the court denied Schwartz's motion.

About two months later, local counsel withdrew from the case. Soon thereafter, Schwartz's father filed a motion to continue a hearing slated to take place in two weeks' time. Schwartz drafted that motion as well as a notice of change of address, which was filed with the court on the same day. Neither submission contained a disclosure that Schwartz had assisted in its preparation.

While awaiting ruling on the continuance, Schwartz communicated with opposing counsel via email, stating that he would appear telephonically at the hearing on the trust's behalf if the court did not grant a continuance. A day before the hearing, the court denied the continuance.

On the day of the hearing, Schwartz faxed a letter to the court, along with a motion to dismiss. Schwartz drafted the letter and the motion, but both documents were signed by his father. The clerk denied the filing on the grounds that the documents had been prepared by an

attorney who was not licensed in Colorado. Schwartz then appeared by telephone on the trust's behalf and, when questioned, told the court that he had drafted the motion to dismiss. The court found that by appearing on behalf of the trust and trustee, Schwartz acted in violation of the court's order denying his pro hac admission. Schwartz stated that he believed he could appear for his father, and that he was unaware Colorado law prohibited a non-attorney trustee from representing a trust pro se.

Through this misconduct, Schwartz violated Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); Colo. RPC 5.5(a)(1) (a lawyer shall not practice law without a law license or other specific authorization); and Colo. RPC 5.5(a)(2) (a lawyer shall not practice law where doing so violates regulations of the legal profession). **CL**

The 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 PDJ website, www.coloradosupremecourt.com/PDJ/PDJ_Decisions.asp.



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