

Disciplinary Case Summaries

No. 18PDJ010. People v. Griffin. 12/19/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Christopher L. Griffin (attorney registration number 26074) for six months, with two months to be served and four months to be stayed upon successful completion of a three-year period of probation. The suspension was effective January 23, 2019. The probationary requirements include attending

ethics and trust account schools, abiding by psychiatric and alcohol monitoring conditions, and submitting to practice monitoring.

Griffin engaged in misconduct in three client matters. In all three representations he failed to keep required financial records. In the first matter, Griffin neglected to provide any fee agreement to the client. He also failed to adequately communicate with his client about the case and to respond to requests

for information. In addition, he mistakenly treated \$500 belonging to his client as earned and deposited that money into his operating account.

The second representation involved two separate matters. Griffin again failed to provide a written statement explaining his fee. Two months later, Griffin had only entered his appearance in one of the cases, so the client fired him and demanded a refund. Griffin did not respond to subsequent inquiries about the refund.

In the third representation, Griffin again did not provide a written fee agreement. Over a period of months, Griffin disregarded the client's multiple requests for an update. Griffin provided no benefit or legal service to the client, who had to pay for a new lawyer.

In addition to his client-centered misconduct, Griffin was arrested in connection with driving under the influence of alcohol in March 2018. In December 2018 he pleaded guilty to misdemeanor DUI.

Through this conduct, Griffin 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 1.5(b) (a lawyer shall inform a client in writing about the lawyer's fees and expenses within a reasonable time after being retained, if the lawyer has not regularly represented the client); Colo. RPC 1.5(f) (a lawyer does not earn fees until a benefit is conferred on the client or the lawyer performs a legal service); Colo. RPC 1.15A(a) (a lawyer shall hold client property separate from the lawyer's own property); Colo. RPC 1.15D (a lawyer shall maintain trust account records); and 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). The case file is public per CRCP 251.31.

No. 18PDJ026. People v. Herrera. 11/29/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Robert Jason Herrera (attorney registration number 37093) for three

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years, effective January 3, 2019. To be reinstated, Herrera will bear the burden of proving by clear and convincing evidence that he has been rehabilitated, has complied with disciplinary orders and rules, and is fit to practice law. He must also undergo an independent medical examination.

Between September and November 2016, Herrera represented a home health-care company in a legal dispute with a law firm; the dispute had been submitted to arbitration. Herrera was a longtime friend of an executive of that company.

On October 3, 2016, the law firm offered to settle the dispute for \$450,000. Sometime before October 19, 2016, Herrera became aware that his client had offered to settle the dispute for either \$25,000 or \$30,000. Herrera was also aware of a plan to obtain opposing counsel's signature on a settlement agreement without opposing counsel realizing that he was signing a settlement agreement. He discussed with his friend and others how to obtain opposing counsel's signature on that settlement document. Herrera was aware that a settlement agreement was placed in a box that was delivered to opposing counsel on October 20, 2016. Herrera then emailed opposing counsel on October 21, 2016, confirming his signature and attaching the signed settlement agreement, even though Herrera was aware that opposing counsel's signature was obtained and placed on the settlement agreement through deception. When he sent that email, Herrera was also aware that neither opposing counsel nor anyone from the law firm had intended to settle the case.

Also on October 21, 2016, Herrera emailed the arbitrator, tendering the purported settlement agreement, asserting that the matter had settled, and canceling the arbitrator's services. When he did so, Herrera was aware that opposing counsel's signature had been placed on the settlement agreement through deception and that neither opposing counsel nor anyone from the law firm had intended to settle the legal matter on October 19 or 20, 2016. He was further aware that his assertions to the arbitrator that the matter had settled and that the arbitrator was no longer needed lacked merit. Herrera failed to correct the false

assertions of fact made to opposing counsel and to the arbitrator between October 21 and November 3, 2016.

In another matter, Herrera assaulted and caused bodily injury to his father on November 20, 2016. Herrera's father had intervened during an altercation between Herrera and his mother. His father's injuries included facial abrasions and a broken rib. Herrera pleaded guilty to assault in the third degree.

Through his conduct, Herrera violated Colo. RPC 1.2(d) (a lawyer shall not counsel a client to engage in criminal or fraudulent conduct); Colo. RPC 3.1 (a lawyer shall not assert frivolous claims); Colo. RPC 3.3(a)(1) (a lawyer shall not knowingly make a false statement of material fact or law to a tribunal); 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 Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). The case file is public per CRCP 251.31.

No. 18PDJ078. People v. Marshard. 12/18/2018.

The Presiding Disciplinary Judge approved the parties' stipulation to reciprocal discipline and suspended Laura Marshard (attorney registration number 21345) for one month, effective December 18, 2018.

This reciprocal discipline case arose out of discipline imposed in Massachusetts. On October 22, 2018, the Supreme Judicial Court for Suffolk County entered an order suspending Marshard for one month. This discipline was premised on Marshard's communication with a victim who was represented by court-appointed counsel. Marshard was an assistant district attorney at the time. She did not ask for or



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obtain consent in a clear manner from the victim's attorney to discuss with the victim the subject of his counsel's representation.

Marshard's misconduct constituted grounds for reciprocal discipline under CRCP 251.5 and 251.21. The case file is public per CRCP 251.31.

No. 18PDJ074. People v. Pengilly. 12/3/2018.

The Presiding Disciplinary Judge approved the parties' stipulation to reciprocal discipline and suspended James W. Pengilly (attorney registration number 27144) for six months and one day with the requirement that he petition for reinstatement in Colorado, if at all, under CRCP 251.29(c). His suspension was effective January 7, 2019. To be reinstated, Pengilly will bear the burden of proving by clear and convincing evidence that he has been rehabilitated, has complied with disciplinary orders and rules, and is fit to practice law.

This reciprocal discipline case arose out of discipline imposed in Nevada. On September 7, 2018, the Nevada Supreme Court entered an order suspending Pengilly for six months and one day, with the automatic requirement that he petition for reinstatement. This discipline was premised on Pengilly's conduct at a plaintiff's deposition where Pengilly was representing himself as the defendant. The Nevada Supreme Court determined that during the deposition Pengilly used vulgarities, called the deponent derogatory names, aggressively interrupted the deponent and opposing counsel, answered several questions for the deponent, and repeatedly made inappropriate statements on the record. Further, he asked the deponent if he was "ready for it" while positioning his hand near his hip, and soon thereafter displayed to the deponent and opposing counsel a firearm he had holstered on his hip. As a result, the deposition was canceled and the underlying litigation was placed on hold.

Pengilly's misconduct constituted grounds for reciprocal discipline under CRCP 251.5 and 251.21. The case file is public per CRCP 251.31.

No. 18PDJ060. People v. Wiegand II. 11/21/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of mis-


conduct and suspended Robert Wiegand II (attorney registration number 07463) for one year and one day, all stayed upon the successful completion of a two-year period of probation, effective November 21, 2018. The probationary requirements include attending ethics school and completing an eight-hour course related to sexual harassment or human resources. The stipulation provides for a stayed, rather than served, suspension based on the preponderance of applicable mitigating factors.

Wiegand, a Denver attorney, hired a female associate in 2009. Around that time, he also hired a female office manager. Wiegand's office shared two unisex bathrooms with an adjoining convenience store. Wiegand and his wife were the sole members of the entity that owned the commercial spaces. One day in 2012, the associate changed her clothes in one of the bathrooms and later discovered a surveillance camera there. She suspected that Wiegand had placed the camera in the bathroom. She presented the camera to Wiegand and suggested calling the police. Wiegand did not agree to immediately do so. He opened the battery compartment and handled the batteries in front of the associate. Ultimately, the police were contacted, but the investigation was later closed.

In addition, the parties agree that Wiegand engaged in various behaviors that made the associate and the office manager uncomfortable and caused them emotional harm, including touching the associate on her back, tapping the office manager on her buttocks with a rolled-up magazine, making comments about women wearing swimsuits at office pool parties, and asking about gynecological care when setting up health insurance. However, it is disputed whether the statute of limitations would bar disciplinary claims based on those behaviors.

The associate and the office manager left the firm. They both filed discrimination claims with the Colorado Civil Rights Division. In a deposition, Wiegand initially testified that he never handled the camera batteries. He later testified that he did so in his associate's presence. After a trial in 2016, the court found in favor of the associate and the office manager on their claims of premises liability and sexual discrimination;

the office manager also prevailed on her claim of intentional infliction of emotional distress. The court found by a preponderance of the evidence that Wiegand was either directly responsible for or complicit in placing the camera. The court stated, however, that it could not make this finding beyond a reasonable doubt. The standard of proof in lawyer discipline proceedings is clear and convincing evidence, and the disciplinary stipulation states that it does not resolve the question of whether Wiegand placed the camera in the restroom. Wiegand denies having done so. The civil rights claims court also found that Wiegand's firm lacked appropriate discrimination or harassment policies and procedures. He has since addressed those issues.

Through his conduct, Wiegand violated Colo. RPC 3.4(a) (a lawyer shall not unlawfully obstruct another party's access to evidence) and Colo. RPC 8.4(h) (a lawyer shall not engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on the lawyer's fitness to practice law). The case file is public per CRCP 251.31. 

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.