

Disciplinary Case Summaries

No. 18PDJ057. *People v. Allen, Jr.* 9/28/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Douglas P. Allen Jr. (attorney registration number 21079) for 60 days, all to be stayed, subject to the successful completion of a one-year period of probation during which he must attend ethics school. The probation took effect on September 28, 2018.

In early 2017, a client retained Allen in a personal injury matter. In February 2017, Allen sent his personal injury client and 11 other clients an email containing contact information for a pain management doctor and advising the clients to schedule individual appointments with the doctor to help their legal cases. Without the clients' permission, Allen then sent the doctor the clients' contact information.

In July 2017, Allen began settlement negotiations with an insurance company on behalf of his personal injury client, including sending the insurance company a demand letter. He did so without the client's authorization to negotiate or settle the client's claim. On August 1, 2017, Allen advised his client that the insurance company had made a settlement demand, and he forwarded to his client emails between him and the insurance company concerning settlement negotiations. The next day, after receiving a copy of Allen's initial demand letter, his client objected that he had not consulted with her before making a demand and that she was unaware of ongoing negotiations. The same day, Allen terminated his representation.

Through this conduct, Allen violated Colo. RPC 1.2(a) (a lawyer must abide by the client's decisions concerning the objectives of a case and consult with the client regarding the means to achieve the objectives); Colo. RPC 1.4(a)(3) (a lawyer shall keep a client reasonably informed about the status of the matter); and Colo. RPC 1.6(a) (a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent).

People v. Faletti. 18PDJ061. 10/9/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Harold E. Faletti (attorney registration number 11801) for one year and one day, all to be stayed upon the successful completion of a two-year period of probation with conditions. The probation was effective on November 13, 2018.

For about six months in 2015, Faletti employed a paralegal. Approximately one year later, the paralegal hired Faletti to assist her in two child support modification matters. Faletti and his client signed a written fee agreement for an hourly rate of \$185 an hour—a reduced rate from his normal fee of \$250. In one of these matters, the court concluded that Faletti lacked substantial justification to file a certain motion, and it ordered attorney fees against Faletti and his client. Faletti acknowledges that he should not have filed this motion.

Later, the paralegal hired new counsel, who filed a motion for contempt against the paralegal's ex-husband. In conjunction with that motion, the new counsel contacted Faletti about attorney fees, and Faletti provided an affidavit stating that he charged the paralegal \$250 per hour. That affidavit was attached to a request for attorney fees relating to the contempt motion. Faletti also provided new counsel with an invoice reflecting an hourly rate of \$250, even though he had billed the paralegal \$185 and sent her an invoice reflecting this reduced rate. Faletti believes the affidavit might have been prepared by his staff, though he does not dispute that he likely reviewed it; he acknowledges that the stated rate in the affidavit was inaccurate, likely resulting from a "cut and paste job" from another document. Faletti has not received any money related to the request for attorney fees.

During the period when Faletti represented the paralegal, he also agreed to represent her boyfriend in two criminal cases in which the paralegal was the named victim. Faletti advised them of the potential conflict of interest but did not secure their informed consent in writing. Faletti acknowledges that he would not have

been able to represent the boyfriend at trial or to cross-examine the paralegal.

Through this conduct, Faletti violated Colo. RPC 1.7(a)(2) (a lawyer shall not represent a client involving a concurrent conflict of interest if there is a significant risk that the representation of one client will be materially limited by the lawyer's responsibilities to another client or a former client); Colo. RPC 1.7(b)(4) (a lawyer must obtain a client's informed consent in writing to a concurrent conflict of interest); Colo. RPC 3.1 (a lawyer shall not assert frivolous claims); and Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

No. 17PDJ031. *People v. Holcomb.* 5/18/2018.

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Shannon Charles Holcomb (attorney registration number 28675), effective June 22, 2018. Holcomb appealed the order; the Colorado Supreme Court dismissed the case on October 4, 2018 for failure to file an opening brief.

In six client matters, Holcomb engaged in unethical conduct, ranging from lack of communication and diligence to failure to protect his clients' interests on termination to failing to obey court orders. Most critically, Holcomb abandoned two clients and converted unearned fees of three clients.

Through his conduct, Holcomb 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 must keep a client reasonably informed about the status of the client's matter); Colo. RPC 1.4(a)(4) (a lawyer must promptly comply with reasonable requests for information); Colo. RPC 1.8(h)(1) (a lawyer may not make an agreement prospectively limiting the lawyer's liability to a client for a malpractice action unless the client is independently represented in making the agreement); Colo. RPC 1.16(d) (a lawyer shall protect a client's interests upon

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termination of the representation, including by giving reasonable notice to the client); Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation of a tribunal except for an open refusal based on an assertion that no valid obligation exists); 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 prejudicing the administration of justice).

No. 18PDJ059. People v. Rose. 9/28/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and disbarred Christopher Michael Rose (attorney registration number 33181). The disbarment took effect on September 28, 2018.

In February 2018, Rose was suspended from the practice of law for three years, effective March 19, 2018. At the time, Rose was representing approximately 11 clients in a Denver District Court case. Though Rose tried to find substitute counsel as early as February, he was unsuccessful in doing so until April.

On April 3, 2018, opposing counsel told Rose that he would seek a status conference about Rose's suspension. Rose acknowledged that he had been suspended and remarked that he was looking for substitute counsel. About a week later, Rose emailed his clients, reporting on the status of the case following a deposition the day prior. In that email, Rose noted that the clients would need to hire a new attorney if they did not settle the case, but he did not discuss his suspension or his consequent inability to continue the representation. Between April 16 and April 18, 2018, Rose made three separate offers to settle his clients' case.

On April 18, 2018, Rose appeared by telephone at the status conference and entered his appearance on his clients' behalf. Opposing counsel notified the court of Rose's suspension, and the court disqualified Rose from the representation. On April 20, 2018, the parties exchanged emails with Rose; a party later relied on those exchanges as a settlement agreement and attempted to enforce that agreement in court filings.

Rose did not comply with the wind-up requirements of CRCP 251.28 following his suspension

when he failed to notify his clients of his suspension by certified mail, failed to notify his opposing counsel of his suspension, and failed to file an affidavit under that rule.

Through this conduct, Rose violated CRCP 251.5(a) and (c) (grounds for discipline include any act or omission that violates the Rules of Professional Conduct or an order of discipline); Colo. RPC 1.16(d) (a lawyer shall protect a client's interests upon termination of the representation); 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 8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice).

No. 18PDJ012. People v. Zeisler. 10/10/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Carol J. Zeisler (attorney registration number 35091) for six months, all to be stayed upon the successful completion of a two-year period of probation, with conditions. The probation took effect on October 10, 2018.

Zeisler committed misconduct in three separate matters. In the first, Zeisler agreed to represent a personal injury client on a contingency basis related to three automobile accidents. Zeisler settled a claim related to one accident, depositing the settlement proceeds in her trust account. Seven months later, the client terminated the representation. Zeisler volunteered to waive all fees, less costs, for work she had done. About four months later, Zeisler sent the client a check for the full settlement amount, but the client stated that she never received the check. Seven months after that, Zeisler agreed to release the funds to the client's new lawyer. Zeisler sent the lawyer a check and a disbursement statement, both of which reflected that she had claimed attorney fees in the amount of 30% of the settlement. She held the disputed fees in her trust account with the intention of filing an interpleader action, and later transferred the funds to her own lawyer, who now holds the money in his trust account. Through this misconduct, Zeisler violated Colo. RPC 1.16(d) (a lawyer shall protect a client's interests upon

termination of the representation) and Colo. RPC 1.15A(b) (upon receiving funds or other property of a client or third person, a lawyer shall promptly deliver to the client or third person any funds or property to which the person is entitled).

In the second matter, Zeisler was arrested and charged in December 2014 with driving under the influence of alcohol. Zeisler's breathalyzer test measured a blood alcohol content of 0.156. She pleaded guilty and was given a 15-month deferred sentence, with 10 days of jail suspended. Zeisler did not report her conviction to disciplinary authorities. Through this misconduct, Zeisler violated CRCP 251.5(b) and 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).

In the third matter, Zeisler was administratively suspended from the practice of law in May 2017 for failure to pay attorney registration fees. By late November 2017, however, she still had over \$40,000 in her trust account, and she had not complied with the winding up provisions of CRCP 251.28. Zeisler later transferred her trust funds to another attorney, who believes that none of the money belonged to clients. In 2018, she paid past-due registration fees, and her license was placed in active status. Through this misconduct, Zeisler violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.15A(b); Colo. RPC 1.15C(c) (a lawyer shall reconcile trust accounts no less than quarterly); Colo. RPC 1.16(d); and Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal). 

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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