

Disciplinary Case Summaries

No. 18PDJ034. *People v. Andrews.* 7/10/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended James Peter Andrews (attorney registration number 38894) for six months, all stayed upon successful completion of a two-year period of probation, effective July 10, 2018. The probationary requirements include practice monitoring, financial monitoring, completion of ethics school, and completion of a self-audit.

Andrews committed misconduct between 2014 and 2016 in the course of representing several members of his church community. In 2013, Andrews helped one of those members, J.W., avoid foreclosure on his grandmother's house in Buena Vista. In spring 2014, J.W. received a second notice of foreclosure. Through recent estate planning work for J.M. (also part of the church community), Andrews knew that J.M. and N.Y., who were close friends, were looking for an investment property. Andrews gave J.W. and N.Y. legal advice about a solution he structured whereby J.M. and N.Y. would purchase the house, allow J.W. to live there rent-free for one year, and give J.W. the right of first refusal on any sale. Andrews formed attorney-client relationships with all three individuals.

In July 2014, Andrews deposited N.Y.'s \$110,000 payment for the house into his trust account. The next month, he used a portion of that money to cure the foreclosure, though he lacked N.Y.'s express authority to do so. Andrews took this step before N.Y. and J.W. had executed a buy/sell contract for the house, thereby placing the funds at risk. The day after curing the foreclosure, Andrews presented J.W. with a buy/sell contract that was partially inaccurate and lacked many critical terms. J.W. and N.Y. both soon signed the contract, though J.W. did not fully understand the transaction's

structure and N.Y. did not understand that he would have to wait at least a year to obtain the deed on the house. Sometime around when the buy/sell contract was signed, Andrews gave N.Y. and J.W. a purported waiver of conflict, which they also signed. But the waiver was confusing, it did not explain the risks inherent in the conflict, and it was ineffective because Andrews did not timely provide it to his clients.

In 2015, Andrews failed to obtain a release for a lien on the house after the lien had been satisfied. Ultimately, J.W. and N.Y. became embroiled in a dispute over ownership of the house. Andrews gave N.Y. advice about the dispute. J.W. fired Andrews in October 2016, and in December 2016 Andrews withdrew from representing N.Y. based on conflicts of interest.

Through this conduct, Andrews violated Colo. RPC 1.1 (a lawyer shall competently represent a client); 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 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a 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); and Colo. RPC 1.7(a) (restricting the circumstances in which a lawyer may represent a client if the representation involves a concurrent conflict of interest).

No. 18PDJ036. *People v. Barry.* 7/31/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct in this reciprocal discipline matter and suspended Sean Joseph Barry (attorney registration number 38676) for three years, effective July 31, 2018. To be reinstated, Barry 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. In addition, Barry's reinstatement to practice law in Iowa is a condition precedent to his petitioning for reinstatement in Colorado.

On February 23, 2018, the Supreme Court of Iowa issued an opinion indefinitely suspending Barry from practicing law in Iowa and declaring him ineligible to seek reinstatement in Iowa for at least one year. The Supreme Court of Iowa determined that Barry violated Iowa RPC 32:1.3 (must exercise diligence); Iowa RPC 32:1.4(a)(3) (must keep client reasonably informed); Iowa RPC 32:1.4(a)(4) (must promptly comply with reasonable requests for information); Iowa RPC 32:8.4(b) (must not engage in a criminal act that reflects adversely on honesty, trustworthiness, or fitness as a lawyer); Iowa RPC 32:8.4(c) (must not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Iowa RPC 32:8.4(d) (must not engage in conduct prejudicial to the administration of justice).

The Supreme Court of Iowa found that Barry knowingly and intentionally misrepresented to his client and his client's family that he had filed a dissolution decree for his client when he had not. Barry's misrepresentations concerning the status of his client's dissolution case continued for 14 months. The Supreme Court of Iowa concluded that Barry committed forgery when he intentionally created a fraudulent dissolution decree without the presiding judge's authority or knowledge. Barry had attached a judge's signature from another case to the decree, placed the case number on the first page of the decree, and inserted file-stamp data on the decree.

Through this conduct, Barry engaged in conduct constituting grounds for discipline under CRCP 251.21. The parties stipulated that this misconduct warrants imposition of a substantially different form of discipline in Colorado than the sanction imposed in Iowa.

No. 18PDJ045. *People v. Barson.* 7/19/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Todd H. Barson (attorney registration number 23529) for six months, all stayed upon successful completion of a two-year

period of probation, effective July 19, 2018. The probationary requirements include completion of ethics school and a trust account audit.

After leaving the government's employ in 1999, Barson established a solo criminal defense practice. At the time, he did not adequately investigate the rules governing how to properly set up a trust account and account for client funds. In about 2009, Barson began leaving earned fees in his trust account rather than moving them to his operating account or other accounts. By late 2014, the \$95,000 in his trust account (which had mostly been earned) exceeded the total sum of his clients' unearned retainers. The next year, Barson began to split unearned client funds between his operating account and his tax account, incorrectly believing based on the balance in his trust account that he did not need to place incoming fees into his trust account. He did not maintain an accounting of the unearned client funds that he split between his operating and tax accounts. Barson sometimes used clients' cash payments for his personal use before depositing the funds into any account.

In Barson's personal divorce case, the court treated the \$95,000 sum in his trust account as part of the marital estate and divided it. During that proceeding, Barson contacted an ethics lawyer and learned that his trust account practices were improper. He then set up a new trust account system, self-reported his prior trust account practices to disciplinary authorities, and voluntarily completed trust account school.

Through this conduct, Barson violated 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 (setting forth requirements for lawyers regarding property of clients and third parties); and Colo. RPC 1.15D (a lawyer shall maintain trust account records).

No. 15PDJ090. People v. Dawn. 7/31/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended William E. Dawn (attorney registration number 02874) for three years, effective July 31, 2018. To be reinstated, Dawn 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.

In 2015, Dawn pleaded guilty in federal court to a single felony count of conspiracy to commit wire and mail fraud. He was sentenced to three years of probation and was ordered to pay over \$366,000 in restitution.

In the criminal proceedings, Dawn admitted the following facts. Dawn was in-house counsel for a Denver financial company, Compass Financial Solutions, LTD (CFS). CFS marketed and sold promissory notes that it purportedly guaranteed. In 2010, CFS began defaulting on those notes. Around that time, Dawn's co-conspirators began to market and sell promissory notes that were purportedly guaranteed by a certain wealthy individual, also a co-conspirator. To induce investors to purchase these notes, Dawn enabled his co-conspirators to make false and misleading representations to

investors. Dawn drafted promissory notes for co-conspirators' use in soliciting investor funds for the notes purportedly guaranteed by the wealthy individual, even though Dawn knew that CFS would in fact use the proceeds from the notes to make payments on CFS's notes in default. To hide this fact from investors, Dawn and his co-conspirators agreed to have investors wire their funds to Dawn's own trust accounts. He then wired the funds to accounts controlled by the co-conspirators.

Through his conduct, Dawn 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). The stipulation took into account a preponderance of mitigating factors.

No. 17PDJ088. People v. Fagan. 6/7/2018.

Following a sanctions hearing, the Presiding

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Disciplinary Judge suspended Charles Douglas Fagan (attorney registration number 07791) for nine months, effective July 12, 2018.

Fagan was hired to take over a pending civil lawsuit. Fagan did not give his client a fee agreement or any other written explanation of his fee. His client never paid him any attorney fees. After attending mediation with his client, Fagan abandoned the case and did not withdraw as his client's counsel. Fagan's client continued with her case pro se and was able to settle the matter. Fagan thereafter failed to participate in the disciplinary proceeding.

Through his conduct, Fagan 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 1.16(d) (a lawyer shall protect a client's interests upon termination of the representation,

including by giving reasonable notice to the client); Colo. RPC 8.1(b) (a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority); and CRCP 251.5(d) (a lawyer's failure to respond without good cause to a request from a disciplinary authority constitutes grounds for discipline).

No. 17PDJ077. People v. Jones. 5/23/2018.

Following a sanctions hearing, the Presiding Disciplinary Judge suspended Ken Jones (Georgia attorney registration number 435125) for one year and one day, effective June 27, 2018.

Jones operated a law firm in Georgia with a satellite office in Denver. He purchased foreclosure information related to Colorado homes and then sent solicitation letters to homeowners advertising his legal services. Jones's solicitation letters were not clearly

marked as advertising materials and misled the recipients into believing Jones was associated with a county public trustee, when he was not. Jones's letters also misleadingly urged homeowners to take immediate action or risk facing fines or imprisonment.

Through his conduct, Jones violated Colo. RPC 7.1(a) (a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services); Colo. RPC 7.3(d) (a lawyer shall include the words "advertising material" on the outside of a solicitation envelope); and Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

No. 18PDJ047. People v. Malpass II. 7/27/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct in this reciprocal discipline matter and suspended Theodore Edward Malpass II (attorney registration number 08570) for two periods, to run concurrently: (1) for two years, all but 90 days stayed upon successful completion of a three-year period of probation; and (2) for one year, all stayed, upon successful completion of a one-year period of probation. Malpass's suspension was effective August 31, 2018. Malpass must comply with all terms and conditions of probation in these cases and all orders related to restitution.

On September 1, 2015, the State Bar Court of California suspended Malpass from the practice of law in California for two years, all but 90 days stayed upon successful completion of a three-year period of probation. Malpass was hired by a couple to file a bankruptcy petition, and he was required to—but did not—seek approval from the bankruptcy court before collecting \$42,000 in attorney fees from his clients. He failed to file a bankruptcy petition for his clients, who terminated his representation. The bankruptcy court ordered Malpass to disgorge the \$42,000 in fees that he had collected. But he did not repay any portion of the \$42,000 before he was suspended from the practice of law in California. During his probationary term in California, Malpass must pay his clients restitution.

On April 29, 2016, the State Bar Court of California suspended Malpass from the practice

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of law in California for one year, all stayed upon successful completion of a one-year period of probation. This suspension was premised on Malpass's conviction of a criminal misdemeanor for attempting to grab a telephone from an acquaintance and striking her in the face. He did not report this conviction to the California state bar.

Malpass did not report either suspension to the Colorado Office of Attorney Regulation Counsel, nor did he report his criminal misdemeanor conviction.

Through his conduct, Malpass engaged in conduct constituting grounds for discipline under CRCP 251.21 and violated Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal).

No. 17PDJ086. People v. Michel. 7/9/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended David Paul Michel (attorney registration number 37674) for 90 days, all stayed upon successful completion of a one-year period of probation, effective July 9, 2018.

In Michel's own divorce case, the Jefferson County District Court awarded Michel's ex-wife \$15,000 in attorney fees in April 2016. Michel was given six months to pay the award, but he failed to do so. On June 21, 2018—one day before a scheduled disciplinary hearing premised on his failure to follow a court order—Michel paid the award.

Through this conduct, Michel violated Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal).

No. 18PDJ004. People v. Pope. 7/19/2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Don R. Pope (attorney registration number 19442) for six months, all stayed upon successful completion of a two-year period of probation, effective July 19, 2018. The probationary requirements include practice monitoring, completing continuing legal education credits, completing ethics school, and formally consulting with another lawyer before filing any motions for recusal under CRCP 97.

Beginning in 2013, Pope represented a family

partnership in a civil suit. One of the partners retained separate counsel. In early 2014, Pope filed a request for stay, arguing that litigation could not proceed because his clients had dissolved the partnership. The motion was not well grounded in law, so the request was denied. Several weeks later, Pope moved for recusal of the judge, but the motion failed to cite case law, as required by the applicable rules.

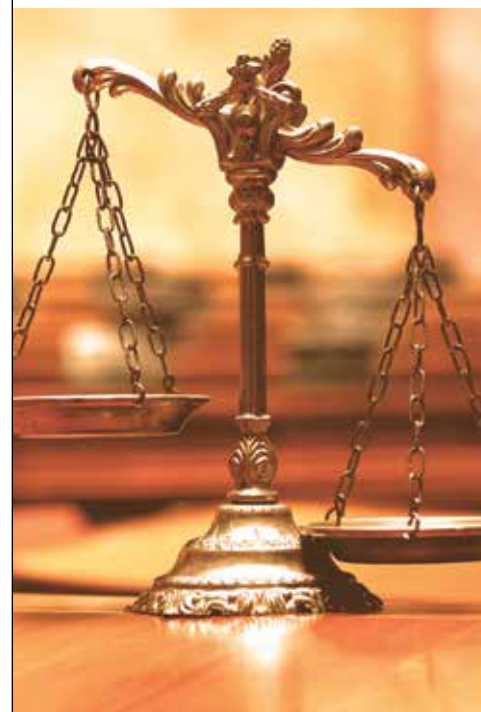
That fall, the court ruled that the partner who had retained separate counsel was the sole general partner, ordered Pope to withdraw, and awarded fees against him and his clients. Pope appealed the order, incorrectly believing that it was a final appealable order under CRCP 54(b), when in fact he needed—and had failed—to request certification of the order as a final order. The appeal therefore was dismissed.

In 2016, Pope represented one of the former partners of the family partnership in a contempt action. Two days before the evidentiary hearing, the court denied Pope's request to allow his client to appear by telephone. The morning of the hearing, Pope moved for recusal to prevent the hearing from going forward. The motion was denied. The hearing went forward without Pope's or his client's participation, and the client was found in contempt. Pope failed to take adequate steps to ensure that his client's interests were represented at this hearing.

Through his conduct, Pope violated Colo. RPC 1.1 (a lawyer shall competently represent a client) and Colo. RPC 3.1 (a lawyer shall not assert frivolous claims). **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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