

Summary of Opinion. People v. Brock, No. 00PDJ091, 4/19/01. Attorney Regulation. The Presiding Disciplinary Judge reinstated Kenneth F. Brock, attorney registration number 25972 to the practice of law effective May 10, 2001.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 600 17TH STREET, SUITE 510-S DENVER, CO 80202 Petitioner: KENNETH F. BROCK, Respondent: THE PEOPLE OF THE STATE OF COLORADO	Case Number: 00PDJ091
OPINION AND ORDER REINSTATING KENNETH F. BROCK'S LICENSE TO PRACTICE LAW	

Opinion by the Presiding Disciplinary Judge Roger L. Keithley and
Hearing Board members Helen R. Stone and Ralph G. Torres,
both members of the bar.

ATTORNEY REINSTATED

This reinstatement matter was heard on January 29, 2001, pursuant to C.R.C.P. 251.29(b) and (c) before the Presiding Disciplinary Judge ("PDJ") and two hearing board members, Helen R. Stone and Ralph G. Torres, both members of the Bar. Debora D. Jones, Assistant Attorney Regulation Counsel represented the People of the State of Colorado (the "People") and petitioner Kenneth F. Brock, ("Brock") represented himself. The PDJ and Hearing Board heard testimony from Brock who testified on his own behalf. Brock's exhibits 1 through 6 were admitted into evidence by stipulation.

The PDJ and Hearing Board considered the testimony and exhibits admitted, assessed the credibility of the witness, and made the following findings of fact which were established by clear and convincing evidence.

I. FINDINGS OF FACT

On December 7, 1999, pursuant to a Conditional Admission of Misconduct and Amendment thereto agreed upon by the parties, the PDJ suspended Kenneth F. Brock from the practice of law for a period of one year and one day, effective January 7, 1999.

Brock's suspension arose from four separate matters involving similar misconduct which occurred within the first three years of Brock's admission to the bar. The misconduct arose at least in part from Brock's decision to relocate his family to Ireland and his failing to confirm with the attorney who took over his pending matters that all matters had been resolved and unused retainers had been refunded. In the first matter, Brock failed to communicate with the client regarding the refund of his retainer in violation of Colo. RPC 1.4(a), Brock failed to segregate the client's retainer from his own funds in violation of Colo. RPC 1.15(a), he failed to timely refund the retainer in violation of Colo. RPC 1.16(d), and he negligently converted the client's retainer in violation of Colo. RPC 8.4(c). In the second matter, Brock failed to segregate client funds from his own funds in violation of Colo. RPC 1.15(a), he failed to refund unearned client funds in a timely manner after termination of representation in violation of Colo. RPC 1.16(d), and he negligently converted client funds in violation of Colo. RPC 8.4(c). In the third matter, Brock believed that the attorney who took over his cases would handle a client's case which Brock had accepted, but he did not follow up with the attorney to determine whether the work had indeed been completed. It had not. Brock's conduct with regard to the third matter constituted neglect of a legal matter in violation of Colo. RPC 1.3. Brock failed to communicate with the client in violation of Colo. RPC 1.4(a), he failed to refund the client's retainer after termination in violation of Colo. RPC 1.16(d), and he negligently converted funds for his own use in violation of Colo. RPC 8.4(c). In the fourth matter, Brock failed to segregate client funds from his own in violation of Colo. RPC 1.15(a), and he violated Colo. RPC 1.5(a) by charging the client for time spent correcting Brock's own error.

The PDJ's Order dated December 7, 1999, required Brock to pay \$339.75 to Kevin Witt and \$800 to Frank Reynolds within six months of the date of the Order. By Order dated December 22, 1999, the PDJ ordered Brock to pay \$807.85 as costs arising from the consolidated disciplinary matter on or before December 7, 2000.

On January 11, 2000, upon the commencement of his period of suspension, Brock timely filed an affidavit with the court pursuant to C.R.C.P. 251.28. He certified that at that time he had no pending matters, that he had complied with all provisions of the December 7,

1999 Order, and that there were no jurisdictions other than Colorado before which Brock was admitted to practice which required notice of his suspension.

During the period of suspension, Brock was not convicted of any crime, had no civil judgments entered against him, was not in arrears on child support payments, had no tax liens or judgments entered against him and was not a party to any criminal actions. During this same period, Brock was a defendant in a civil action involving a claim of legal malpractice. The plaintiff moved to dismiss the matter with prejudice. Brock has no record of illegal drug use, abuse of alcohol or history of any conduct involving moral turpitude. Brock has had no psychological impairments before or after the Order suspending him from the practice of law.

Brock filed a Verified Petition for Reinstatement on December 7, 2000, stating that he had paid complete restitution to all parties concerned: \$339.75 paid to Kevin Witt, and \$800 paid to Frank Reynolds. Brock has paid \$807.85 in costs to the Office of Attorney Regulation Counsel for the underlying consolidated disciplinary proceeding.

During the period of suspension, Brock completed thirteen hours of Continuing Legal Education ("CLE") and is currently enrolled in a fifteen credit CLE on real estate. Brock enrolled in CLE courses that addressed the problems in his law office management which resulted in his suspension: his billing and accounting practices and failing to communicate with clients with regard to the balance on their retainers. Brock understood from these CLE courses that he must change his prior general practice to a specialized practice, he understood the difference between various fee structures, he understood that he must overhaul his manual billing and accounting systems, and most importantly, that he must communicate with his clients about their payments and outstanding balances.

As a means of rectifying past errors and assuring that they will not happen again, Brock acquired a computer accounting program and a billing program and demonstrated his proficiency with both of them. Brock stated that by using these programs in his practice he will accurately understand client balances and he will promptly notify clients of their remaining account balances. Brock is prepared to implement a duplicate calendaring system recording dates for clients' legal matters. Brock recognized that he must be vigilant in determining whether he has the requisite knowledge and skill required in a particular case.

Brock is remorseful for his actions and acknowledged his past misconduct and the breach of trust that occurred resulting from his poor accounting. He will scrupulously segregate funds between his trust and operating accounts, and he will employ whatever help necessary to ensure that he can readily account to clients on their account balances.

Following his suspension, Brock became more involved with his family and functioned as the primary care giver of his young children.

II. CONCLUSIONS OF LAW

Kenneth F. Brock was licensed to practice law in the State of Colorado on October 23, 1995, attorney registration number 25972. He is subject to the jurisdiction of this court pursuant to C.R.C.P. 251.1(b). Brock filed a Petition for Reinstatement on December 7, 2000, and tendered a deposit in the amount of \$500 as costs of the reinstatement proceeding.

C.R.C.P. 251.29 states in relevant part:

(c) The petition for reinstatement must set forth:

(3) The facts other than passage of time and absence of additional misconduct upon which the petitioning attorney relies to establish that the attorney possesses all of the qualifications required of applicants for admission to the Bar of Colorado, fully considering the previous disciplinary action taken against the attorney;

(4) Evidence of compliance with all applicable disciplinary orders and with all provisions of this Chapter regarding actions required of suspended attorneys;

(5) Evidence of efforts to maintain professional competence through continuing legal education or otherwise during the period of suspension.

In addition to the requirements set forth above, in order to determine whether the attorney applying for reinstatement has been rehabilitated, the Hearing Board must consider the factors set forth in *People v Klein*, 756 P. 2d 1013, 1016 (Colo. 1988). These factors include the petitioner's state of mind and professional ability, including character, conduct since the imposition of the original discipline, professional competence, candor and sincerity, present business pursuits, personal and community service, and the petitioner's recognition of the seriousness of his previous misconduct. "[T]he

analysis of rehabilitation should be directed at the professional or moral shortcoming which resulted in the discipline imposed.” *People v. Goff*, No. 99PDJ023 (Colo. PDJ August 4, 2000), 29 Colo. Law. 126, 129 (October 2000) (citations omitted).

Brock has complied with the Order of suspension and all requirements of C.R.C.P. 251 *et seq.*: upon his suspension he timely filed an affidavit pursuant to C.R.C.P. 251.28; he timely paid the costs of the disciplinary proceeding in the amount of \$ 807.85; he made restitution in a timely manner to Kevin Witt in the amount of \$399.75, and Frank Reynolds in the amount of \$800.

Brock has demonstrated the steps he has taken to address the professional deficiencies which precipitated the specific conduct leading to discipline. He established that he has maintained his professional competence by completing a significant number of CLE classes. He described the efforts he has undertaken to educate himself regarding those areas where the misconduct arose; his previous poor accounting and billing practices and failure to communicate with clients regarding their retainers. Brock presented evidence from which it could be concluded that he would adhere to the standards of the profession: he demonstrated proficiency in a billing software program and an accounting software program which would allow him to track client’s retainers and account to his clients quickly and accurately regarding their balances. He demonstrated his new accounting practice with regard to both his trust account and operating account.

Prior to the events giving rise to his suspension, Brock was not familiar with the requirement that he maintain a COLTAF account. He now fully understands the necessity of maintaining one. His misconduct arose at least in part from the fact that he had little experience in the practice of law: all of the events giving rise to his suspension occurred within three years of his admission to the bar.

Brock was candid and forthright with the PDJ and Hearing Board and expressed genuine remorse for his past conduct. He is a dedicated husband and father and participates actively in his family life.

Under the factors set forth in both C.R.C.P. 251.29 and *Klein*, 756 P.2d at 1016, the PDJ and Hearing Board find that Brock established by clear and convincing evidence that he is rehabilitated. Based on the testimony and evidence presented, the PDJ and Hearing Board do not find it necessary to impose conditions on Brock’s practice; rather, the self-imposed conditions are sufficient to warrant that Brock can ably manage the billing and accounting systems of a law practice.

III. ORDER OF REINSTATEMENT

It is therefore ORDERED:

Upon the conditions set forth herein, **KENNETH F. BROCK**
attorney registration no. 25972 is REINSTATED to the practice of law.
Pursuant to C.R.C.P. 251.27(g) **the effective date of reinstatement**
shall be twenty-one (21) days from the date of this Order: the 10th
day of May, 2001.

DATED THIS 19th DAY OF APRIL, 2001.

(SIGNED) _____
ROGER L. KEITHLEY
PRESIDING DISCIPLINARY JUDGE

(SIGNED) _____
HELEN R. STONE
HEARING BOARD MEMBER

(SIGNED) _____
RALPH G. TORRES
HEARING BOARD MEMBER