

People v. Jay M. Donohue. 17PDJ078. February 27, 2018.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Jay M. Donohue (attorney registration number 36355) for one year and one day, with nine months served and the remainder stayed upon successful completion of a two-year period of probation, effective February 27, 2018.

Beginning in 2006, three individuals worked together to develop residential real estate in Denver, purchasing older homes and building new residences on the properties. One person procured financing from investors and lenders. The other two were married to each other, and the husband was a licensed real estate agent. The development projects were conducted through various LLCs. The individual operated a development LLC, the married couple operated a second development LLC, and the wife operated a design LLC. Donohue represented the design LLC. The husband and the individual formed LLCs for specific development projects; together, they also operated an LLC known as LVK. Donohue entered into a fee agreement with LVK, and required a nonrefundable retainer.

In September 2013, Donohue and the husband discussed investing in real property that was currently under contract with the husband's development LLC. Donohue formed his own LLC to facilitate his and his parents' purchase of the property with the husband's LLC. The two LLCs executed a contract for the purchase and development of the property. There was a significant risk that Donohue's representation of LVK and the husband would be materially limited by Donohue's personal interest in his and his family's investment in the real property. Donohue had a conflict of interest between his obligations to the married couple, as their lawyer, and his personal interest in protecting his parent's investment. Donohue never advised the clients about this potential conflict, nor did he obtain the clients' written informed consent to the conflict.

In December 2013, Donohue sent the husband a proposed fee agreement. At the time, Donohue represented LVK, of which the husband was a member. Donohue also had an attorney-client relationship with the wife, who had become a member of LVK. In addition, Donohue's LLC and the husband's development LLC jointly owned property together and intended to form an LLC to develop it. There was a significant risk that Donohue's representation of LVK would be materially limited by his representation of the husband. Donohue did not advise the clients of the potential conflicts, nor did he obtain written informed consent to such conflicts.

Also in December 2013, Donohue attended a meeting with the couple, the individual, and a CPA. At the meeting, Donohue accused the individual of fraud based on the manner in which he had raised funds for certain property-specific LLCs. Donohue later threatened the individual that if he did not relinquish his operational responsibilities and agree to dissolve LVK, Donohue would report him to securities authorities; he also "guaranteed" that his CPA would turn the individual into Colorado regulatory authorities.

Through this conduct, Donohue violated Colo. RPC 1.5(g) (a lawyer shall not charge nonrefundable fees or retainers); Colo. RPC 1.7(a)(2) (a lawyer shall not represent a client if the representation involves a concurrent conflict of interest); and Colo. RPC 4.5(a) (a lawyer shall not threaten criminal, administrative, or disciplinary charges to obtain an advantage in a civil matter).