

People v. Dennis W. Hartley. 14PDJo83 (consolidated with 14PDJo90). April 20, 2015.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Dennis W. Hartley (Attorney Registration Number 00788) from the practice of law for one year and one day, all but six months stayed pending successful completion of an eighteen-month period of probation. As conditions of probation, Hartley must pay \$10,000.00 in restitution, attend trust account school, and undergo quarterly financial monitoring. As part of the agreement, the parties stipulated to the dismissal of thirteen claims of misconduct. Hartley's suspension takes effect May 25, 2015.

In 2004, Hartley was retained to seek post-conviction relief for a client who, as a juvenile, was sentenced to life in prison without parole. Hartley's fee agreement required a \$25,000.00 retainer. The day the agreement was signed, Hartley received \$10,000.00, which he deposited directly into his operating account. Between 2006 and 2008, Hartley received an additional \$5,500.00 fee, which he did not place in his trust account. He did not keep any contemporaneous accounting records for his client's case. In 2008, his client requested an accounting and a copy of his file. Hartley did not provide these items when requested and was unable to reproduce any accounting. In 2010, his client again requested an accounting and his file. Hartley did not have the file because he had experienced two significant computer crashes. Eventually, Hartley was successful in modifying his client's sentence to include parole after forty years.

In a second matter, Hartley was hired to represent a client on post-conviction matters. He received a \$25,000.00 retainer for his work. Hartley immediately treated the retainer as earned and used it for his own benefit. Three months after he deposited the retainer, he provided his client a written fee agreement. Hartley did not keep a ledger of his client's funds, nor did he keep any billing records. Hartley eventually filed a post-conviction motion on behalf of his client, which was denied because it was largely duplicative to one his client had filed pro se before hiring Hartley. Hartley recreated his time records after a request for investigation was initiated, and he claimed to have earned \$12,362.50 of the retainer. Hartley thereafter refunded \$15,000.00 to his client and has agreed to return the remaining \$10,000.00.

In a third matter, Hartley was hired to defend a client in a criminal case. Hartley charged a \$2,500.00 flat fee but did not provide his client with a written fee agreement. Hartley then deposited the flat fee directly into his operating account upon receipt. Thereafter, Hartley negotiated a plea agreement on his client's behalf but failed to appear with his client at a court hearing regarding the plea. Ultimately, the charges against Hartley's client were dismissed. Hartley provided the People with an accounting of his client's retainer. Although the accounting established he earned the \$2,500.00, it contained inconsistencies and errors.

Through his conduct in these three matters, Hartley violated Colo. RPC 1.1 (a lawyer shall provide competent representation to a client); Colo. RPC 1.5(a) (a lawyer shall not charge an unreasonable fee); Colo. RPC 1.5(b) (a lawyer shall communicate, in writing, the rate or basis of the fee and expenses within a reasonable time after commencing representation); Colo.

RPC 1.5(f) (a lawyer shall not earn fees until a lawyer confers a benefit on the client or performs a legal service); Colo. RPC 1.15(a) (2008) (a lawyer shall hold client property separate from the lawyer's own property); Colo. RPC 1.15(j)(4)-(5) (2008) (a lawyer shall maintain copies for seven years of all disbursements and bills issued to clients); and Colo. RPC 1.15(c) (2008) (a lawyer shall keep separate property in which two or more persons claim interests until there is an accounting and severance of those interests).