

People v. Michael Omer Kelley. 17PDJ050. July 10, 2017.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Michael Omer Kelley (attorney registration number 02457) for one year and one day, all to be stayed on the successful completion of a two-year period of probation, with conditions to include financial monitoring. The probation took effect on July 10, 2017.

Through family members, Kelley was retained to handle a divorce case by a Mexican citizen who had been deported. Kelley accepted a \$3,600.00 retainer, though he never spoke with the client. Keeping \$300.00, he deposited the remainder of the retainer into his operating account on the day he received the funds. He then paid a translator another \$300.00 by check. Less than a week later, the client's family instructed Kelley to stop work on the case.

Kelley's COLTAF account was later overdrawn, and his operating account dipped to \$902.35. Kelley thereby recklessly converted money from the unearned retainer. The client's family eventually requested an accounting and a return of unearned funds; when the request was repeated, Kelley sent a check for \$1,000.00 but did not include an accounting. The family then demanded the return of an additional \$1,600.00. The client's family did not receive additional funds for another three months, until after the family grieved Kelley. Kelley's counsel later provided what amounted to an accounting as part of the disciplinary process.

In these matters, Kelley violated Colo. RPC 1.4(a)(4) (a lawyer shall promptly comply with reasonable requests for information); 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 1.8(f)(1) (a lawyer shall not accept compensation for representing a client from someone other than the client unless the client gives informed consent); Colo. RPC 1.15A(a) (a lawyer shall hold client property separate from the lawyer's own property); 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 that person is entitled to receive); Colo. RPC 1.15D (a lawyer shall maintain trust account records); Colo. RPC 1.16(d) (a lawyer shall protect a client's interests upon termination of the representation, including by returning unearned fees); and Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). The sanction took into account five mitigating factors and a sole aggravating factor.