

People v. Herbert Jeffrey Marcus. 23PDJ020. May 2, 2023.

The Presiding Disciplinary Judge approved the parties' stipulation to discipline and suspended Herbert Jeffrey Marcus (attorney registration number 22389) for one year and one day, with six months to be served and six months and one day to be stayed upon the successful completion of a one-year period of probation with conditions. The suspension takes effect June 6, 2023.

Sometime after September 2020, Marcus began representing a client in several criminal matters. Marcus orally discussed with his client his fee agreement, which he believes was for a flat fee of \$3,500.00 to work on the client's pending cases. But Marcus has no written fee agreement with the client or a written statement regarding the basis or rate of his fee in the client's cases. Nor does Marcus maintain any financial records regarding payments from his clients.

In November 2021, Marcus filed two plea agreements for his client without ensuring that his client understood the effect the pleas would have on the client's immigration status. The court presiding over one of the cases continued the plea hearing to provide Marcus additional time to discuss the case with his client. Marcus's client did not participate in the continued hearing, where Marcus stated that his client spoke perfect English and did not require an interpreter. Marcus also implied that his client was dishonest when his client previously asked for an interpreter. In addition, Marcus revealed that his client "had an immigration problem" and that his client's sister had recently hired an immigration lawyer for advice about the plea's immigration consequences. The court continued the hearing to May 2022. Marcus later filed in the case an opinion letter authored by the immigration lawyer that contained his client's personal information about the client's immigration status, revealing confidential client information in a public court filing.

In another client matter, Marcus did not appear at his client's disposition hearing in August 2022, causing the court to continue the hearing. Marcus also failed to appear at the continued hearing the next month. In addition, Marcus did not maintain financial records of the client's payments for legal services.

Through this conduct, Marcus violated Colo. RPC 1.3 (a lawyer must act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(b) (a lawyer must explain a matter so as to permit the client to make informed decisions regarding the representation); Colo. RPC 1.5(b) (a lawyer must inform a client in writing about the lawyer's fees and expenses within a reasonable time after being retained, if the lawyer has not regularly represented the client); Colo. RPC 1.6(a) (a lawyer must not reveal information relating to the representation of a client unless the client gives informed consent); and Colo. RPC 1.15D (a lawyer must maintain trust account records).

The case file is public per C.R.C.P. 242.41(a).