

People v. Robert Stuart McCormick. 14PDJ003, consolidated with 14PDJ017. October 22, 2014.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Robert Stuart McCormick (Attorney Registration Number 12870) for one year and one day, all stayed upon a three-year period of probation, with conditions including practice monitoring, psychological monitoring, restitution of client fees, and payment of attorney's fees awards. The probation took effect October 22, 2014.

McCormick agreed to represent clients in a civil action to seek insurance coverage for the cost of remediating environmental damage caused by oil wells operated by the clients. McCormick wished—unreasonably—to limit the scope of his representation such that he would only try the case, leaving to another attorney all the pre-trial work. But McCormick failed to obtain the clients' informed consent, failed to adequately explain the limited representation, and failed to explain the material risks involved, in contravention of Colo. RPC 1.2(c) (a lawyer may limit the representation's scope only if the limitation is reasonable and the client gives informed consent).

McCormick improperly named several parties as interpleader defendants. These parties were forced to move to dismiss themselves from the case, and the court was required to rule on those motions. McCormick thereby prejudiced the administration of justice in violation of Colo. RPC 8.4(d).

McCormick paid the other attorney an hourly rate for work on the case. But McCormick, as counsel of record, failed to supervise the attorney's work on the case and failed to take remedial action to address the attorney's neglect of the case. McCormick therefore violated Colo. RPC 5.1(c)(2) (a lawyer with supervisory authority over another lawyer is responsible for the other lawyer's violation of the rules if the lawyer knows of the misconduct when its consequences can be mitigated and fails to take remedial action).

As a result, McCormick did not respond to several motions, failed to file an opening appellate brief, and neglected to obtain service upon certain defendants or dismiss those defendants so that the case could be placed "at issue," thereby violating Colo. RPC 1.3 (a lawyer shall act with diligence and promptness). McCormick never adequately informed the clients that various motions had been filed by the defendants, that he and his co-counsel failed to respond to those motions, or that attorney's fees awards had entered against the clients. This conduct violated Colo. RPC 1.4 (a lawyer shall reasonably communicate with the client).

McCormick eventually came to believe that his Lexis-Nexis account was not reliably giving him notice of pending motions and orders. Yet he did not withdraw from the representation, even though he could not adequately monitor filings and therefore was likely to violate ethical rules. McCormick thereby violated Colo. RPC 1.16(a)(1) (a lawyer shall withdraw if the representation will result in ethical violations).