

People v. Brown, 99PDJ021, 6/23/00. Attorney Regulation.

The Presiding Disciplinary Judge and the Hearing Board found at the conclusion of trial that the People failed to establish by a clear and convincing standard that the respondent's conduct constituted violations of Colo. RPC 8.4(c), Colo. RPC 3.3(a)(1), Colo. RPC 3.4(c), and Colo. RPC 8.4(d) and dismissed Counts II through IV for respondent Kirk Patterson Brown's alleged retention of personal funds in his trust account to avoid tax liability, and his alleged failure to divulge information and documents in the course of his bankruptcy proceeding. The Presiding Disciplinary Judge and Hearing Board found that Count I was subject to an agreement pursuant to the provisions of C.R.C.P. 251.13 including the provisions of confidentiality contained in C.R.C.P. 251.13(i). Respondent was ordered to pay costs of the proceeding in prosecuting Count I.

SUPREME COURT, STATE OF COLORADO
CASE NO.: **99PDJ021**
ORIGINAL PROCEEDING IN DISCIPLINE BEFORE
THE PRESIDING DISCIPLINARY JUDGE

ORDER OF DISMISSAL

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

v.

KIRK PATTERSON BROWN,

Respondent.

Order issued by Presiding Disciplinary Judge Roger L. Keithley and Hearing Board members Richard P. Holme and Marna M. Lake, both members of the bar.

This matter was heard on August 5, 1999, before the Presiding Disciplinary Judge ("PDJ") and two Hearing Board members, Richard P. Holme and Marna M. Lake. Debora D. Jones, Assistant Regulation Counsel, represented the People of the State of Colorado (the "People"). Michael D. Gross appeared on behalf of the respondent Kirk P. Brown ("respondent"), who was also present. The People's Exhibits 1 through 8, 12, 13¹, 14, 15(a)², 16,

¹ Exhibit 13 was admitted solely for the purpose of establishing that the exhibit had been served on a bank.

² Exhibit 15(a) was admitted solely to establish notice.

17, 18, 19, 20 and 22 were admitted into evidence. The People presented testimony from Virginia Moses Dalton, Joseph E. Losavio, Jr., Robert M. Duitch, respondent Kirk P. Brown and Helen Tomicich Brown. Respondent presented testimony from Kirk P. Brown and Robert M. Duitch. Respondent has taken and subscribed the oath of admission, was admitted to the bar of the Colorado Supreme Court on October 1, 1971, and is registered upon the official records of the Court, attorney registration number 04510. Respondent is subject to the jurisdiction of this court pursuant to C.R.C.P. 251.1(b).

The PDJ and Hearing Board considered the exhibits, the testimony of the witnesses, assessed the credibility of the witnesses and enter the following Order:

I. CHARGES:

The Complaint alleges six separate counts: Count I alleges a violation of The Colorado Rules of Professional Conduct (“Colo. RPC”) 1.15(a)(a lawyer shall hold property of clients or third persons that is in a lawyer’s possession separate from the lawyer’s own property); Count II alleges a violation of Colo. RPC 8.4(c)(a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation); Count III alleges a violation of Colo. RPC 3.3(a)(1)(a lawyer shall not knowingly make a false statement of material fact or law to a tribunal), Colo. RPC 8.4(c) and Colo. RPC 8.4(d)(a lawyer shall not engage in conduct that is prejudicial to the administration of justice); Count IV alleges a violation of Colo. RPC 3.4(c)(a lawyer shall not knowingly disobey an obligation under the rules of a tribunal), Colo. RPC 8.4(c) and Colo. RPC 8.4(d), and Count VI alleges a violation of Colo. RPC 3.4(c), Colo. RPC 8.4(c) and Colo. RPC 8.4(d). Count V was dismissed at the commencement of trial upon the oral motion of the People. Count VI had been dismissed prior to trial.

II. FINDINGS OF FACT

As to Counts II, III, and IV set forth in the Complaint, the PDJ and Hearing Board conclude after deliberation that the facts supporting the alleged violations were not proven by clear and convincing evidence as required by C.R.C.P. 251.18(d). The allegations of misconduct set forth in Count I and the conclusions of the PDJ and Hearing Board regarding those facts which were established by clear and convincing evidence regarding Count I are subject to an agreement pursuant to the provisions of C.R.C.P. 251.13 including the provisions of confidentiality contained in C.R.C.P. 251.13(i).

III. ORDER:

It is therefore ORDERED:

1. Counts II, III, and IV are DISMISSED WITH PREJUDICE;
2. Resolution of the charges set forth in Count I will be held in abeyance pending satisfactory completion of the C.R.C.P. 251.13 agreement. Within 30 days of the satisfactory completion of the terms and conditions set forth in that agreement, the Office of Attorney Regulation Counsel shall notify the PDJ and Count I shall be dismissed. In the event of any breach of the agreement, the Office of Attorney Regulation Counsel shall notify the PDJ within 20 days of notice of such breach and the matter will proceed in accordance with C.R.C.P. 251.13(g)(2).
3. The People shall submit a Statement of Costs within ten (10) days of the date of this Order setting forth the costs incurred in the investigation and prosecution of Count I. Respondent shall have five (5) days thereafter to submit a response thereto.

4. There being no just reason for delay, this Order shall be deemed final for purposes of C.R.C.P. 54(b).

DATED THIS 23rd DAY OF JUNE, 2000.

(SIGNED)

ROGER L. KEITHLEY
PRESIDING DISCIPLINARY JUDGE

(SIGNED)

RICHARD P. HOLME
HEARING BOARD MEMBER

(SIGNED)

MARNA M. LAKE
HEARING BOARD MEMBER

