

People v. Steven M. Bush. 23PDJ002. May 15, 2023.

The Presiding Disciplinary Judge approved the parties' stipulation to discipline and publicly censure Steven M. Bush (attorney registration number 13167), effective May 15, 2023.

In July 2017, Bush was hired by Individual 1, who wanted to incorporate a company and purchase the assets of his current employer. After incorporating the company, Bush began jointly representing Individual 1 and the company. Individual 1 planned to fund the asset purchase through a Small Business Administration-backed loan, seller financing, and \$250,000.00 in cash from Individual 2, whom Bush had introduced to Individual 1. Individuals 1 and 2 negotiated the general terms of their agreement without Bush's involvement.

In January 2018, after reviewing Ethics Opinion No. 68, Bush agreed to jointly represent Individuals 1 and 2 and the company with respect to a stockholders agreement. In a letter, Bush noted that Individual 2 would lend the company approximately \$250,000.00, evidenced by a promissory note with terms to be negotiated. One day before the asset purchase transaction was set to close, Individual 1 sent Bush an email chain in which Individual 1 noted "the split" would be "51 [Individual 1] 49 [Individual 2]" but also asked Bush to review and stated, "I think we should be equal let's set up a time to talk." Bush does not remember seeing the email. The transaction closed with funds that included Individual 2's contribution of \$250,100.00.

Later, Bush realized that Individuals 1 and 2 had not agreed to ownership terms. Nonetheless, Bush concluded he could continue representing the company exclusively with respect to a shareholders' agreement, encouraging Individuals 1 and 2 to work with independent counsel to represent only their interests. At Bush's request, Individual 1 accepted these terms; Individual 2 did not. Even so, Bush continued to act as the company's counsel in negotiating the stockholders' agreement, during which he proposed terms and rejected, on the company's behalf, Individual 2's proposed terms. During the negotiations, the company had not yet issued stock or empaneled a board of directors. As corporate organizer, Individual 1 was still exclusively speaking for the company until October 2018, when he empaneled a board of directors. The board found that no ownership agreement existed, concluded that Individual 2's contribution of \$250,000.00 was a loan, and issued all of the company's outstanding shares to Individual 1.

The company and Individuals 1 and 2 ended up in litigation. Individual 2 also sued Bush, who lost on a breach of fiduciary duty claim and was ordered to pay a total damages award of \$682,100.00. The judgment is stayed pending review of Bush's post-trial motions.

Through this negligent conduct, Bush violated Colo. RPC 1.9(a) (a lawyer who has formerly represented a client in a matter shall not later represent another person in the same or a substantially related matter in which that person's interests are materially adverse to those of the former client unless the former client gives written informed consent) and Colo. 1.9(b) (a lawyer must not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired confidential material information). The case file is public per C.R.C.P. 242.41(a).