

People v. Mark Joseph Fischer. 15PDJ034. May 6, 2015.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Mark Joseph Fischer (Attorney Registration Number 07161) from the practice of law for ninety days, all stayed pending successful completion of a two-year period of probation. The conditions of probation include working with an attorney mentor to help Fischer improve his skills in interacting properly with difficult clients. The probation took effect May 6, 2015.

Fischer's misconduct took place during his representation of a client in a contested probate case. Fischer's client refused to answer opposing counsel's written discovery requests, contrary to Fischer's advice. The client was fined \$7,500.00, and Fischer paid the sanction himself. By doing so, he violated Colo. RPC 1.8(e) (a lawyer shall not provide financial assistance to a client in connection with a pending or contemplated litigation).

Eventually, the only remaining dispute in the probate case involved an icemaker. The court ordered Fischer's client to return the icemaker to the decedent's children, but she returned the wrong icemaker. Although Fischer's client indicated at a later hearing that she understood which specific icemaker she was required to return, she later claimed confusion about which icemaker was at issue. After the court again clarified which icemaker had to be returned, the client delayed fourteen months before delivering the correct icemaker to the decedent's children. Nearly \$200,000.00 in penalties were assessed against Fischer's client due to her fourteen-month delay. Fischer urged his client to deliver the correct icemaker during this period, but he also failed at times to adequately communicate with her. He thus violated Colo. RPC 1.4(a)(3) (a lawyer shall keep a client reasonably informed about the status of the matter). He also did not move to withdraw as counsel, even though his client was disobeying a court order.

When Fischer's client did not pay the assessed penalties, opposing counsel moved for entry of judgment, seeking an award of \$231,000.00. Although the motion was served on Fischer, he negligently failed to notify his client of the motion. When Fischer failed to respond to the motion, the court entered judgment against his client. The court e-served Fischer with that order, but he again negligently failed to notify his client. Fischer's actions deprived his client of the opportunity to challenge the judgment and violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client).