

People v. Kevin D. Heupel. 15PDJ032 (consolidated with 15PDJ043). January 14, 2016.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Kevin D. Heupel (Attorney Registration Number 30264) for one year and one day. Heupel's suspension will take effect on February 28, 2016. To be reinstated, Heupel will bear the burden of proving by clear and convincing evidence that he has been rehabilitated, has complied with disciplinary orders and rules, and is fit to practice law.

In approximately 587 Chapter 7 bankruptcy cases where Heupel represented debtors, he employed a no-money-down business model in which each debtor would reaffirm the debt of attorney's fees and Heupel would be paid after the filing of the bankruptcy petition. Heupel failed to give these clients written informed consent concerning this arrangement. In some of these cases, Heupel never filed a reaffirmation agreement with the bankruptcy court yet took action to recover money from those clients. In other cases, he filed reaffirmation agreements that the court never took up or denied, yet he acted to recover money from those clients. Heupel also continued to collect fees in some cases after a discharge in bankruptcy had been entered and no reaffirmation agreement had been imposed. These actions violated an automatic stay imposed by federal bankruptcy law. As a result, the United States Trustee filed proceedings against Heupel, which resulted in a settlement requiring Heupel to pay more than \$420,000.00 and a fine of \$50,000.00. In these cases, Heupel violated Colo. RPC 1.7(a) (a lawyer shall not represent a client if the representation involves a concurrent conflict of interest); Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey the rules of a tribunal); Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Colo. RPC 8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice).

In two other bankruptcy cases, Heupel filed motions as "attorney for the debtor," even though he had never met either debtor. One debtor was told to sign Heupel's fee agreement by a real estate agency that was selling the debtor's house. The other debtor, who hired the same agency, never signed a fee agreement with Heupel, and the agency's owner signed on the debtor's behalf. Heupel's misconduct violated Colo. RPC 1.8(f) (prohibiting a lawyer from accepting compensation from a person other than the client unless there is no interference with the lawyer's independent judgment or with the lawyer-client relationship) and Colo. RPC 8.4(d).

In another matter, Heupel entered into a flat fee agreement with a bankruptcy client. That agreement called for a non-refundable "earned as paid" fee and required the client to pay a \$250.00 cancellation fee and a \$60.00 fee to refund any unearned fees. This agreement contravened Colo. RPC 1.5(a) (prohibiting a lawyer from charging an unreasonable fee) and Colo. RPC 1.5(g) (prohibiting nonrefundable fees and retainers).

In a final client matter, Heupel, who represented a Chapter 13 bankruptcy debtor, penned a letter to an acquisition company, representing that Heupel had standing to sue the company and that the Chapter 13 Trustee had asked him to help recover funds from the company. In fact, these statements were false. This conduct violated Colo. RPC 4.1 (lawyers shall not

knowingly make false statements of material fact or law to a third person while representing a client).