

*People v. Denise M. Kay. 24PDJ042. May 20, 2024.*

The Presiding Disciplinary Judge approved the parties' stipulation to discipline and suspended Denise M. Kay (attorney registration number 31266) for six months, all to be stayed pending her successful completion of a three-year period of probation. Kay's probation will take effect only if and when her law license is reinstated from disability inactive status.

In March 2022, Kay backed into a parked car. Police responded and noted that Kay had bloodshot, watery, and glassy eyes, had difficulty with balance, and smelled of alcohol. Her blood alcohol content ("BAC") measured 0.298. She was arrested for driving under the influence ("DUI"). In October 2022, Kay pleaded guilty to DUI and was sentenced to twelve months of probation with ninety days of jail, which was suspended pending her successful completion of probation, including monitored sobriety, alcohol treatment, and ten days of house arrest.

Kay struggled to comply. She reported to probation several times while under the influence of alcohol. While on probation, she was stopped by police in August 2023, as they suspected she was driving under the influence. She was instructed to pull into a nearby parking lot; she struck the patrol car while backing up. She also displayed signs of impairment and was deemed uncooperative. She was arrested for DUI and charged in Arapahoe County. Within three weeks, and hours after one of her court dates, she was again stopped by officers, who suspected she was driving under the influence after she lodged her car in a pile of landscape rocks at a grocery store parking lot. Officers observed several signs suggesting she was impaired. Via chemical test, her BAC registered as 0.297. She was arrested and charged with DUI.

While these two DUI charges were pending, Kay's probation in the first DUI case was revoked for failing to comply with conditions. In January 2024, Kay agreed to a global disposition of all three cases, but the presiding court rejected the disposition as too lenient and expressed "grave concerns" about Kay's conduct. After a pause in the proceeding, Kay returned to the courtroom, where the presiding judge questioned whether she was under the influence and ordered her to submit to a preliminary breath test. The test showed a breath alcohol content of 0.324. The judge held Kay in direct contempt and remanded her to county jail for three days.

In February 2024, Kay appeared in court again to resolve all three cases, pleading guilty to DUI as a second and third offense. She was sentenced to one year in jail, with forty-three days of credit served and work release authorized; twenty-four months of probation with monitored sobriety; alcohol evaluation and recommended treatment; eighty hours of public service; and a victim impact panel through Mothers Against Drunk Driving. Kay did not timely self-report her DUI convictions to regulatory authorities as she was required to do under C.R.C.P. 242.11(c)(1).

Through this conduct, Kay violated Colo. RPC 3.4(c) (a lawyer must not knowingly disobey an obligation under the rules of a tribunal); Colo. RPC 8.4(b) (it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); and Colo. RPC 8.4(d) (providing that it is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice). The case file is public per C.R.C.P. 242.41(a).