

People v. Carolyn M. Kelly. 14PDJ051. June 30, 2014.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Carolyn M. Kelly (Attorney Registration Number 19429) for six months, all stayed upon a two-year period of probation, with conditions. The probation took effect June 30, 2014.

Kelly was disciplined for her misconduct while she represented two clients under one fee agreement for a \$7,500.00 flat fee. Per the agreement, Kelly was retained to represent a father in an action for modification of a parenting plan in a post-dissolution case and, concurrently, the father's mother in an action for grandparent visitation. The fee agreement did not expressly allocate any percentage of the flat fee to either case but provided that the fee covered all attorney's fees and expenses related to both cases. Kelly reserved her right to collect additional fees and costs. Kelly's clients agreed to pay her \$2,405.25 up front and to pay the remaining balance in bimonthly installments.

On September 30, 2011, Kelly received \$3,305.25 from her clients but deposited only \$3,000.00 into her COLTAF account. From January 2012 to January 2013, Kelly successfully litigated the modification of the father's parenting plan. In February 2013, the grandmother requested information about the status of her case, and Kelly told her that she would require an additional retainer to pursue grandparent visitation due to additional information she had received about the grandmother's mental health. The grandmother objected and demanded that Kelly return her half of the \$7,500.00 fee. In response, Kelly sent the grandmother a bill for over \$21,000.00 in additional attorney's fees and costs. Kelly did not intend to collect these fees; rather, she sent this letter because she was angry with her client.

Throughout this representation, Kelly failed to deposit all of the payments she received from her clients into her COLTAF account, and she treated her fees as earned upon receipt. She also withdrew money from her COLTAF account without sending her clients billing statements or an accounting. The parties participated in fee arbitration through the Colorado Bar Association, and Kelly was ordered to pay her client \$3,750.00.

Kelly's conduct violated Colo. RPC 1.5(a) (prohibiting a lawyer from making an agreement, charging, or collecting an unreasonable fee or an unreasonable amount for expenses); Colo. RPC 1.15(a) (requiring attorneys to hold the property of their clients separate from their own property); Colo. RPC 1.15(c) (requiring lawyers to keep separate property in which two or more persons claim interests until there is an accounting and severance of those interests); Colo. RPC 1.16(d) (requiring attorneys to protect their clients' interests upon termination of the representation); and Colo. RPC 3.1 (proscribing lawyers from asserting frivolous claims).