

People v. Randall H. Miller. 16PDJo67. June 1, 2017.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and publicly censured Randall H. Miller (attorney registration number 33694), effective June 1, 2017.

Beginning in early April 2014, Miller and his law firm defended a civil case in which one member of the client group was accused by a former employer of taking confidential information and trade secrets when he left the company's employ. Before Miller's representation began, the client attempted to purge the email account he had used for business involving his former employer, though not all emails were in fact deleted at that time. Contrary to an allegation made in the civil case, the client told Miller that he had not taken any documents with him when he left the company and that he maintained none of the company's information.

On April 9, 2014, while planning a response to a motion for a temporary restraining order, Miller directed his associate to confirm that the client possessed no company information. Based on a miscommunication, the associate directed the client to delete still-existing company emails. The associate rescinded the instruction within hours, but not before the client had deleted the emails. On April 10, Miller filed his client's affidavit, in which the client stated that he maintained access to some of the company's emails after his departure. The affidavit did not disclose, however, that the client's access continued after the complaint had been filed or that he had deleted multiple emails. Later that day, Miller took steps to recover the emails deleted as a result of his associate's instructions. He soon learned that the effort likely had succeeded, and he directed those documents to be preserved.

Miller disclosed to opposing counsel on May 5 that his client possessed company materials but he did not disclose the April 9 deletion or the likely recovery of those emails. During a hearing later in May, Miller examined his client about pre-litigation email deletions, but the client did not mention the post-complaint deletions or that some deletions were done at counsel's direction. In October, Miller submitted an interrogatory answer regarding email deletions, but the answer likewise did not mention the post-litigation email deletions directed by counsel. In November 2014, after spoliation of evidence issues had been raised in the litigation and just before deposition discovery began, Miller disclosed to opposing counsel the post-complaint loss and likely recovery of the emails, as well as counsel's involvement in that process. Miller, along with his law firm and other persons, was later sanctioned by the trial court. The court found that Miller, in particular, had failed to correct false and misleading statements in the client's April 10 affidavit.

In this matter, Miller violated Colo. RPC 3.3(a)(3) (a lawyer shall not knowingly offer false evidence, and a lawyer shall take reasonable remedial measures if the lawyer comes to know that false material evidence has been offered). Miller was negligent in determining whether his client's statements in the April 10 affidavit were false, and he was reckless in failing to take remedial action to timely disclose the false statements. The sanction of public censure took into account six mitigating factors and a sole aggravating factor.