

People v. Gabriel Nathan Schwartz. 18PDJo62. April 18, 2019.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Gabriel Nathan Schwartz (attorney registration number 35915) for one year and one day, with three months and one day to be stayed upon successful completion of a two-year period of probation, with conditions. The suspension takes effect June 17, 2019.

In August 2011, a trust beneficiary—whose trust had not yet been funded—met with Schwartz to learn about trusts and his potential inheritance following the death of his parents. The beneficiary retained Schwartz to represent him in a probate matter. The engagement letter, in part, provided that Schwartz was entitled to a contingency fee of 40 percent for gross monies collected during certain phases of litigation.

After the designated party declined to serve as trustee for the beneficiary's trust, Schwartz sought to be appointed as successor trustee. During a hearing in the probate matter, Schwartz testified that he understood the concerns about potential conflicts, namely that he had previously represented and continued to represent the beneficiary at the time. Schwartz did not disclose at the hearing that he intended to claim entitlement to a 40 percent contingency fee based on the amount of money that was used to fund the trust. Schwartz was appointed as trustee.

About three years later, the beneficiary became concerned about the trust. He hired another lawyer, who moved the probate court to remove Schwartz as trustee and to assess damages against him. Schwartz resigned as trustee. The probate court then held a trial to determine questions of damages to be assessed against Schwartz.

By paying himself a 40 percent contingency fee for his minimal work as an attorney in the probate matter for the beneficiary—during which no litigation took place and no monies were collected—Schwartz violated Colo. RPC 1.5(a) (a lawyer shall not agree to, charge, or collect an unreasonable fee). By representing the beneficiary in the probate matter while his ability to do so was materially limited by his own interests, including by having himself appointed as the trustee of the beneficiary's trust without disclosing to the probate court his intention to claim a 40 percent contingency fee out of money paid to the trust, Schwartz violated Colo. RPC 1.7(a) (a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. The case file is public per C.R.C.P. 251.31.