

People v. Heather Marx Tice. 23PDJ047. September 15, 2023.

The Presiding Disciplinary Judge approved the parties' stipulation to discipline and publicly censured Heather Marx Tice (attorney registration number 38688). The public censure, which carries conditions, is effective October 20, 2023.

In 2018, Tice moved, on her client's behalf, to dismiss a complaint brought by the client's homeowners association ("HOA"), which filed the complaint after Tice's client repainted her home in a color that did not comply with the HOA's regulations and without seeking the HOA's preapproval. Tice, who also moved for attorney's fees, asserted in the motion that the HOA filed the complaint in October 2018, after the applicable one-year statute of limitations had run. In fact, the HOA had timely filed the complaint in July 2018. Tice based her assertion on information from her client and did not independently verify the information before filing the motion to dismiss. The presiding court denied the motion, deeming it groundless and frivolous, and permitted Tice to answer the complaint within fourteen days of the order. But Tice did not file an answer or seek an extension to do so. And though Tice had conferred with opposing counsel about a motion to reconsider the order, she never moved to reconsider.

In December 2018, the HOA moved for default judgment and for attorney's fees. The HOA did not serve the motion and the affidavits supporting their attorney's fee request on Tice through the e-filing system; instead, it did so purportedly via regular mail. Tice, who claims that she never received the filings, did not respond to the motion. In January 2019, the court granted the motion and entered orders requiring Tice's client to work with the HOA to repaint the client's home and authorizing the HOA to repaint the home if the client did not do so. In the order, the court also entered judgment against Tice's client for \$2,541.05 in attorney's fees and costs, and against Tice for \$896.00 in attorney's fees.

Meanwhile, from December 2018 until mid-March 2019, Tice had no communication with her client. Tice had sent emails containing updates about the case to the wrong email address, and her client did not learn of the order denying the motion to dismiss, the motion for default judgment, and the entry of default judgment until March 2019. That month, Tice notified her client for the first time that the client would need to retain new counsel who specializes in HOA law. The client retained substitute counsel in May 2019, and the case was eventually settled. In 2021, the client sued Tice for malpractice. Tice and the client settled the case, which was dismissed in May 2022.

Through this conduct, Tice violated Colo. RPC 1.3 (a lawyer must act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a) (a lawyer must reasonably communicate with the client); Colo. RPC 1.4(b) (a lawyer must explain a matter so as to permit the client to make informed decisions regarding the representation); and Colo. RPC 3.1 (a lawyer must not assert frivolous claims).

The case file is public per C.R.C.P. 242.41(a).