

**People v. James C. Underhill Jr. 15PDJ040 (consolidated with 15PDJ044 and 15PDJ059). August 12, 2015.**

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended James C. Underhill Jr. (Attorney Registration Number 15836) from the practice of law for eighteen months, to run consecutively to the suspension he is currently serving in case number 12PDJ071. To be reinstated, Underhill will bear the burden of proving by clear and convincing evidence that he has been rehabilitated, has complied with disciplinary orders and rules, and is fit to practice law. The suspension takes effect October 1, 2015.

A married couple retained Underhill to help with the husband's ongoing post-decree dispute with his former spouse. The clients signed a fee agreement outlining the charges for certain tasks. The clients could not pay all the fees up front. Underhill verbally agreed to monthly payments, with an initial \$1,000.00 down payment, but he did not explain that he reserved the right to demand full payment at his sole discretion. He collected an additional \$200.00 for a "filing fee," though he took no action that required such a fee. Underhill failed to adequately communicate with the clients and did not inform them of opposing counsel's objections to their discovery responses. Underhill later threatened to withdraw in two business days unless the clients made full payment of all fees. When the couple terminated the representation, Underhill declined to refund the \$200.00 "filing fee." Through this conduct, Underhill violated Colo. RPC 1.4(a) (a lawyer shall reasonably communicate with the client); Colo. RPC 1.4(b) (a lawyer shall explain a matter so as to permit the client to make informed decisions regarding the representation); Colo. RPC 1.5(a) (a lawyer shall not charge an unreasonable fee); Colo. RPC 1.5(b) (a lawyer shall communicate, in writing, the rate or basis of the fee and expenses within a reasonable time after commencing representation); and Colo. RPC 1.16(d) (a lawyer shall protect a client's interests upon termination of the representation, including by refunding unearned fees).

The couple then posted complaints about Underhill on two websites. He responded with internet postings that publicly shamed the couple by disclosing highly sensitive and confidential information gleaned from attorney-client discussions, in contravention of Colo. RPC 1.6(a) (a lawyer shall not reveal information relating to the representation of a client) and Colo. RPC 1.9(c)(2) (a lawyer shall not reveal information relating to the representation of a former client).

Underhill then sued the couple for defamation. Although he knew that the couple had retained counsel, Underhill communicated with them ex parte on several occasions, even though their counsel repeatedly implored him not to do so. Through this conduct, Underhill violated Colo. RPC 4.2 (a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by counsel in the matter, unless the lawyer has the consent of the opposing counsel). When the lawsuit was dismissed, Underhill brought a second defamation action in a different court, alleging without adequate factual basis that the couple had made other defamatory internet postings. Underhill thereby violated Colo. RPC 3.1 (a lawyer shall not bring a proceeding

unless there is a basis in fact for doing so that is not frivolous) and Colo. RPC 8.4(d) (a lawyer shall not engage in conduct that prejudices the administration of justice).

In a second client matter, Underhill represented another couple in the renegotiation of a lease for their business. The couple eventually terminated Underhill's services. Dissatisfied, they posted a complaint about Underhill on the Better Business Bureau website. Underhill publicly replied by publishing an attorney-client communication on the internet and making uncomplimentary observations about and accusations against the couple based on confidential information related to the representation. In so doing, Underhill violated Colo. RPC 1.6(a) or 1.9(c)(2).