

People v. Matthew Alexander Kilby. 24PDJ020. March 15, 2024.

The Presiding Disciplinary Judge approved the parties' stipulation to discipline and suspended Matthew Alexander Kilby (attorney registration number 51519) for one year and one day, all to be stayed pending Kilby's successful completion of a three-year period of probation with conditions. The probation took effect March 15, 2024. The stipulation takes into account significant mitigating factors.

In one matter, a client retained Kilby in a dissolution of marriage action for a \$2,500.00 flat fee, which the client paid in advance. In error, Kilby then treated the matter as an hourly fee case, withdrawing funds as if he earned them on an hourly fee basis. Kilby failed to timely file proof of mediation in the case. As a result, the presiding judge vacated the hearing, warning that the case would be dismissed if the parties failed to timely file a joint management certificate. The judge later dismissed the case for failure to comply. Over the next two months, the client emailed Kilby several times requesting an update, but Kilby never provided one. The client later contacted court personnel and learned her case had been dismissed. She then asked Kilby to withdraw and requested a refund. Kilby did not respond. Instead, about a month later, Kilby provided the client a notice of firm closure in which he explained he was experiencing health and personal issues that significantly affected his ability to represent clients. During the representation, Kilby had withdrawn from his trust account all the client's funds believing he earned them on an hourly basis. He later refunded the client's full retainer.

In a second matter, a client hired Kilby in a child custody matter. Kilby petitioned for allocation of parental responsibilities, and the parties mediated. About six weeks later, however, opposing counsel moved to compel and for sanctions, alleging that Kilby's client had failed to file financial disclosures despite several requests for compliance. The court granted the motion to compel in part, directing the parties to provide a status update at the pretrial conference. But Kilby and his client, who was not apprised of the conference, failed to appear. The court ordered them to appear and show cause why it should not impose sanctions. At the show cause hearing, Kilby and his client again failed to appear; neither was aware of the court's order because Kilby had not checked his e-filing notices. Just three days before the contested custody hearing, Kilby moved to withdraw as the client's counsel due to personal reasons. At the custody hearing, the client appeared, but Kilby did not. The court determined that Kilby engaged in improper conduct by, among other things, failing to make financial disclosures, attend the pretrial conference, and respond to the show cause motion and sanctions motion. The court ordered Kilby to pay opposing counsel's fees, which Kilby eventually paid. The client received Kilby's notice of firm closure but was unable to hire another lawyer due to lack of funds.

Through this conduct, Kilby violated Colo. RPC 1.3 (a lawyer must act with reasonable diligence and promptness in representing a client); Colo. RPC 1.4(a)(3) (a lawyer must keep a client reasonably informed about the status of the matter); Colo. RPC 1.15A(a) (a lawyer must hold client property separate from the lawyer's own property); and Colo. RPC 1.16(d) (a lawyer must protect a client's interests on termination of the representation, including by giving reasonable notice to the client and returning unearned fees). The case file is public per C.R.C.P. 242.41(a).