

People v. Kristin Marie Muscato. 23PDJ057. October 23, 2023.

The Presiding Disciplinary Judge approved the parties' stipulation to discipline and suspended Kristin Marie Muscato (attorney registration number 47850), for six months, all to be stayed upon Muscato's successful completion of a two-year period of probation, with conditions. The sanction takes into account significant mitigating factors. Muscato's probation took effect October 23, 2023.

In early August 2022, when Muscato should have been holding \$2,100.00 of her client's funds in her trust account, her trust account contained only \$526.78. Muscato did not accurately track her trust account activity; instead, she transferred money from her trust account when she believed she earned the funds without concurrently running invoices that reflected the transfers.

On October 14, 2022, in a different matter, a client asked Muscato to withdraw from his custody case and requested she provide an accounting of his \$3,500.00 retainer. Over the next two days, the client twice repeated his request for an accounting. Between October 16 and 18, 2022, Muscato transferred \$3,500.00 from her trust account to her operating account. On October 18, 2022, she told her client that she would withdraw from the case that day. But Muscato did not move to withdraw until eight days later. In November 2022, the former client requested an accounting five more times. In early January 2023, he filed a request for investigation with disciplinary authorities. Later that month, Muscato provided an invoice showing a balance due of \$2,508.86 and a simultaneous transfer of \$3,500.00, even though the transfers occurred in October 2022. Around the time Muscato issued the invoice, she asked her former client during a telephone call to pay her immediately and threatened to add eighteen percent interest. Muscato did not notify him that she was recording the telephone call.

In a third case, while hospitalized for a medical emergency in April 2023, Muscato failed to appear for a permanent orders hearing without notifying the court or moving to continue. She also failed to file prehearing materials in the case. Muscato's client appeared at the hearing and asked for a continuance. The client knew that Muscato had been hospitalized but was given few other details. The client did not know that Muscato would not appear for the hearing.

In 2023, in a fourth client matter, Muscato did not send her client an invoice until she had billed \$9,266.00, more than double the \$4,500.00 retainer. Muscato failed to inform the client of documents filed in the client's case after Muscato moved to withdraw from the case.

Through this conduct, Muscato violated Colo. RPC 1.3 (a lawyer must act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a)(3)-(4) (a lawyer must keep a client reasonably informed about the status of the matter and must promptly comply with reasonable requests for information); Colo. RPC 1.15A(a) (a lawyer must hold client property separate from the lawyer's own property); Colo. RPC 1.15D (a lawyer must maintain trust account records); Colo. RPC 1.16(d) (a lawyer must protect a client's interests upon termination of the representation, including by returning any papers and property to which the client is entitled); and Colo. RPC 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). The case file is public per C.R.C.P. 242.41(a).