

People v. John Mervin Evans. 14PDJ075. March 13, 2015.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended John Mervin Evans (Attorney Registration Number 20549) from the practice of law for eight months, all stayed pending successful completion of an eighteen-month period of probation. The conditions of probation include attending trust account school and ethics school and submitting to financial monitoring. The probation took effect March 13, 2015.

The parties stipulated to the following facts: in late 2011, a dentist hired Evans in a collection matter involving a second dentist. Evans and his client entered into an hourly fee agreement with a retainer. Three weeks later, after negotiation about the fee, the client signed a second fee agreement with the same scope of representation. The agreement stated that the client would pay \$3,000.00 immediately and \$3,000.00 per week up to an "estimated sum" of \$25,000.00. Although Evans later referred to this agreement as a "flat fee" agreement, he intended it to be an hourly fee agreement with a cap of \$25,000.00. No hourly rate in fact appears in the agreement. Evans did not abide by his obligation to make his fee agreement clear.

The client paid Evans more than \$25,000.00 between late 2011 and mid-2012. Evans deposited all of those payments into his operating account, believing he had earned them prior to receipt based upon work he had performed. By depositing the funds into his operating account, Evans commingled his client's funds with his own.

In this case, Evans violated Colo. RPC 1.5(f) (fees are not earned until a lawyer confers a benefit on the client or performs a legal service); Colo. RPC 1.15(a) (a lawyer shall hold client property separate from the lawyer's own property); and Colo. RPC 1.15(c) (a lawyer shall keep separate any property in which two or more persons claim interests until there is an accounting and severance of those interests).