

People v. McFlynn, No.00PDJ075, 12/11/00. Attorney Regulation.

The Presiding Disciplinary Judge accepted the parties' Conditional Admission of Misconduct and disbarred Respondent, Timothy McFlynn, from the practice of law. Respondent endorsed four checks from his law firm's COLTAF account made payable to four of the firm's clients or third parties with the payees' names, signed the checks over to himself, and then deposited each check into his personal checking account. Two of the checks consisted of funds determined to be amounts owed to the firm's clients. One of the checks consisted of funds earned by the firm but not yet transferred from the COLTAF to the operating account. One of the checks reflected an amount which Respondent had determined consisted of "surplus funds" in the COLTAF account, which were later turned over to the State Treasury as unclaimed property. Respondent wrote the checks in such a way as to conceal his conduct from the other shareholders in the firm.

Respondent took these actions in order to bridge a time gap for an anticipated personal loan and intended to repay the funds when he obtained his loan. Respondent did not have authority to endorse checks payable to the clients and third party, nor to endorse the checks over to himself. Respondent knowingly converted the firm's funds. In a separate matter, Respondent's client agreed to loan Respondent a certain amount of the client's funds held in the firm's COLTAF account. Respondent negligently borrowed \$1,015 over the amount, understanding that there were sufficient funds belonging to the client to cover the full amount of the loan. Respondent therefore negligently converted \$1,015 in funds from the COLTAF account. Additionally, Respondent failed to provide written disclosure of the terms of the loan to the client and failed to advise the client to seek independent counsel. Respondent violated Colo. RPC 1.8(a) by failing to provide written disclosures to the client, Colo. RPC 1.15(b) by failing to transfer earned fees from the firm's COLTAF account into the firm's operating account, Colo. RPC 8.4(c) by knowingly converting funds and, in one instance, negligently converting funds, and by engaging in dishonesty by concealing his conduct from the other shareholders. Respondent was ordered to pay the costs of the proceedings.