

People v. Cash K. Parker. 23PDJ024. May 17, 2023.

The Presiding Disciplinary Judge approved the parties' stipulation and suspended Cash K. Parker (attorney registration number 40158) from the practice of law for thirty days, all to be stayed upon a one-year period of probation, with conditions. The sanction takes into account significant mitigating considerations. The probation took effect May 17, 2023.

In January 2021, Parker took over a representation of a company in a case litigated in the United States District Court for the District of Montana. Parker was aware that the company's general counsel expected monthly status reports concerning the litigation and litigation plan. Shortly before Parker took over the case, Parker's predecessor counsel engaged a liability expert and arranged for relevant documents to be sent to the expert. The expert anticipated that he would receive additional documents and that a site visit would be arranged before he prepared his report. But Parker did not communicate further with the expert until June 21, 2021.

In June 2021, Parker secured from opposing counsel three extensions of time, up through June 21, 2021, to disclose expert witnesses. During this period, Parker did not provide the expert additional documents, did not arrange for a site visit, and did not communicate with the expert about the expert report. On June 21, 2021, Parker asked the expert whether he could provide a report in the following few days. The expert said no; he could not create a report with the limited documents he had, he explained, and even if he had all the necessary documents, he needed 20-30 hours to prepare a report. Parker also recalls the expert referring to other clients, scheduling issues, and emergency investigations—information that Parker says he believed helped explain why the expert could not promptly complete a report. The same day, without informing his client, Parker contacted a prospective liability expert, and that second expert agreed to work on the matter. Parker's client did not learn about the second expert for months.

Also on June 21, 2021, Parker asked the court to extend the expert disclosure deadline, alleging that the originally retained expert said he could not complete the report by the disclosure deadline due to scheduling difficulties, emergency investigations, and demands in other claims. The court denied Parker's motion for an extension, but Parker nevertheless filed expert witness disclosures on June 30, 2021. When opposing counsel moved to exclude those experts, Parker's local counsel responded, asserting that an extension was needed based on factors outside the company's control. The response attached an affidavit from Parker representing that the expert could not complete the report due to scheduling difficulties, other investigation, and demands in other claims; this representation was inaccurate in that it did not provide a complete or accurate picture of why the company did not timely disclose its experts, and it created the false impression that the expert was not diligent or was at fault for failing to manage his workload.

On August 10, 2021, Parker sent the first status report to his client since June 2021. The report did not mention that the expert deadline had been missed, that opposing counsel had moved to strike the company's experts, or that Parker had hired a new expert. When the company's general counsel later learned of these developments, he terminated Parker's representation, and Parker's firm wrote off more than \$80,000.00 in attorney's fees and expenses.

Through this conduct, and under Colo. RPC 8.5(b) (for conduct in connection with a matter pending before a tribunal, the rules of professional conduct in which the tribunal sits should apply, unless the tribunal's rules provide otherwise), Parker violated Montana Rules of Professional Conduct 1.3 (diligence); 1.4(a)(2) (a lawyer must reasonably consult with the client about the means by which the client's objectives are to be accomplished); 1.4(a)(4) (a lawyer must promptly comply with reasonable requests for information); and 8.4(c) (conduct involving dishonesty, deceit, fraud or misrepresentation).

The case file is public per C.R.C.P. 242.41(a).