

*People v. Phillip F. Malouff Jr. 24PDJ014. March 8, 2024.*

The Presiding Disciplinary Judge approved the parties' amended stipulation to discipline and suspended Phillip F. Malouff Jr. (attorney registration number 09076) for six months, all to be stayed pending Malouff's successful completion of a one-year period of probation, with conditions. The probation took effect March 8, 2024.

Malouff is a sole practitioner in La Junta, Colorado. In July 2022, a client contacted Malouff to represent her in a quiet title action so she could sell a parcel of real estate. Malouff's fee agreement called for a prepaid retainer of attorney's fees but also provided that Malouff would collect the retainer from proceeds of the property's sale. It further stated that any past-due fees, costs, and charges would be secured by a lien against all assets of the client, including real property protected from adverse claims. The client never paid the retainer or any fees, and Malouff never attempted to enforce a lien. Malouff has since removed the "lien" language from his standard fee agreement.

Malouff prepared and mailed a draft complaint to the client, who was out of state. The client reviewed and signed the complaint but did not notarize it. She then mailed it back to Malouff. At the time, Malouff was also a notary public in Colorado. After reviewing the complaint with the client by telephone, he asked whether he could notarize it for her. But he was not legally allowed to notarize documents remotely outside the signer's presence, and he did not comply with the remote notary provisions applicable in Colorado. Even so, the client agreed, and Malouff notarized the document with the statement, "Subscribed and sworn to before me in the County of Otero, State of Colorado, this 27th day of July, 2022." Malouff then filed the complaint.

In an answer, the opposing party called into question whether Malouff properly notarized the complaint. The opposing party also filed a complaint with the Notary Division of the Colorado Secretary of State, which opened an investigation. Soon thereafter, Malouff and the client fell out of contact. Malouff filed a reply on the client's behalf but then withdrew from the matter.

During the Secretary of State's investigation, Malouff admitted that the client did not sign the complaint in his presence or in Otero County. He voluntarily resigned his notary license and admitted to violating C.R.S. § 24-21-506, which provides that the signer must appear personally; C.R.S. § 24-21-519, for failing to use his "official signature"; and C.R.S. § 24-21-504(2), which prohibits a notary from performing a notarial act concerning a record in which the notary has a disqualifying interest. Malouff also agreed to be precluded from any future commission as a Colorado notary public. His agreements brought the Secretary of State's action to a close.

Through this conduct, Malouff violated Colo. RPC 1.8(a) (a lawyer must not enter into a business transaction with a client unless the client is advised to seek independent legal counsel and the client gives written informed consent to the transaction); Colo. RPC 3.3(a)(1) (a lawyer must not knowingly make a false statement of material fact or law to a tribunal); 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).