

People v. Timothy Paul McCaffrey. 21PDJ001. January 12, 2021.

The Presiding Disciplinary Judge approved the parties' conditional admission of misconduct and suspended Timothy Paul McCaffrey (attorney registration number 12411) for one year, with ninety days to be served and the remainder to be stayed upon the successful completion of a one-year period of probation, with conditions. The suspension takes effect February 16, 2021.

In November 2018, McCaffrey agreed to represent a client in a divorce proceeding for an hourly rate. The client paid a retainer at the time of signing the fee agreement, which stated that McCaffrey would invoice the client monthly. Not until about eight months into the representation—after the divorce was finalized—did McCaffrey provide the client any invoices.

In July 2019, the parties negotiated the final terms of the divorce. The client's husband proposed a provision that the parties should each pay their respective attorney's fees. McCaffrey counseled the client to agree, even though he had never provided her any invoices or estimates of his legal fees, and even though he did not advise her that her husband might be ordered to pay some of her attorney's fees. The client accepted the terms.

McCaffrey then sent to the client his first two invoices, based on quarterly accountings, and applied the retainer held in trust toward those amounts. He sent another three invoices over the next month. Soon after McCaffrey sent his last invoice, the client wrote to him, telling him that she would send money when she sold the marital house. The same day, McCaffrey filed a notice of attorney's lien in the domestic case and emailed the client a notice of the lien, though he did not mention it when he emailed her the following day. McCaffrey also sent a letter to the client's title company requesting funds to cover his attorney's fees, and he received the requested money a few days later when the house sale was completed. But McCaffrey never filed a civil action to enforce his attorney's fee claim, mistakenly believing that he had complied with the charging lien statute, even though he had not. By failing to take the required statutory steps to enforce his attorney's fee claim, he never established legal entitlement to the funds. Thus, when he transferred those funds from his trust account to his operating account, he thereby engaged in technical conversion.

Through this conduct, McCaffrey violated Colo. RPC 1.4(a)(3) (a lawyer shall keep a client reasonably informed about the status of the matter); Colo. RPC 1.4(b) (a lawyer shall explain a matter so as to permit the client to make informed decisions regarding the representation); Colo. RPC 1.15A(a) (a lawyer shall hold client property separate from the lawyer's own property); and Colo. RPC 1.15A(c) (a lawyer shall keep separate any property in which two or more persons claim an interest until there is a resolution of the claims).

The case file is public per C.R.C.P. 251.31.