

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

DISCIPLINARY ACTION NUMBER 17-CC-1

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

COMMITTEE ON CONDUCT

**APR 02 2019**

Petitioner,

**JEFFREY P. COLWELL**  
CLERK

NICK WIMMERSHOFF

Respondent.

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**CONDITIONAL ADMISSION OF MISCONDUCT AND  
DISCIPLINE OF ATTORNEY NICK WIMMERSHOFF**

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Before the Disciplinary Panel is the Stipulation, Agreement, and Affidavit Regarding Respondent's Conditional Admission of Misconduct ("Conditional Admission of Misconduct") attested to by the Respondent, Nick Wimmershoff, and the Committee on Conduct Chair, Suneeta Hazra.

**I. JURISDICTION AND PROCEDURAL HISTORY**

1. The Colorado Supreme Court licensed Respondent to practice law in the state of Colorado on May 1, 1979; his Colorado Attorney Registration Number is 9538.
2. The United States District Court for the District of Colorado admitted Respondent to the bar of the Court, also on May 1, 1979.
3. Respondent, consequently, consents to the jurisdiction of this Court; certifies his familiarity with the local rules of the United States District Court for the District of Colorado; and certifies his familiarity with the Standards of Professional Conduct adopted by the Court in D.C.COLO.LAttyR 2.

4. D.C.COLO.LAttyR 2 adopts the Colorado Rules of Professional Conduct, with limited exceptions, as standards of professional responsibility in the United States District Court for the District of Colorado.

5. Respondent has a prior disciplinary history with the Colorado Supreme Court that includes a suspension of 60 days (all stayed), a suspension of three years (for which he was reinstated by the Disciplinary Panel on May 15, 2007); and a public censure. Neither the entirely-stayed suspension nor the public censure resulted in the loss of the Respondent's privilege to practice before this Court or before the Colorado Supreme Court.

6. By letter dated February 13, 2017, Respondent self-reported to the Court his entry of a guilty plea in Boulder County to one count of child abuse resulting in serious bodily injury, a Class 4 Extraordinary Risk Felony under C.R.S. 18-6-401(1) and (7)(a)(IV). In that case, Respondent waived the establishment of a factual basis and acknowledged, through his plea of guilty, that he "unlawfully, feloniously, and with criminal negligence caused an injury to or permitted to be unreasonably placed in a situation that posed a threat of injury to the life or health of a child," which "resulted in serious bodily injury to the child."

7. The Clerk of Court forwarded the matter to the Committee on Conduct as required under D.C.COLO.LAttyR 6 and D.C.COLO.LAttyR 8; the Committee on Conduct Chair assigned Subcommittee B to investigate.

8. Upon Subcommittee B's recommendation, the full Committee recommended that the Disciplinary Panel impose an interim suspension on Respondent.

9. On May 26, 2017, the Disciplinary Panel ordered that an interim suspension be imposed upon Respondent pursuant to D.C.COLO.LAttyR 8(d), effective immediately.

10. The Colorado Supreme Court subsequently entered an order of immediate suspension of on June 27, 2017.

11. On October 11, 2017, the Presiding Disciplinary Judge for the Colorado Supreme Court, William R. Lucero, approved a stipulation executed by Mr. Wimmershoff suspending him immediately from the practice of law in Colorado for a period of three years.

12. Mr. Wimmershoff stipulated that he had violated Colo. RPC 8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects) and C.R.C.P. 251.5(b) (any criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer constitutes grounds for discipline).

13. Subcommittee B's Chair, David Hersh, by letter dated November 15, 2018, inquired of Respondent as to his interest in negotiating a Conditional Admission of Misconduct under D.C.COLO.LAttyR 7(g), coterminous with the three-year suspension imposed by the Colorado Supreme Court.

14. By letter dated December 10, 2018, Mr. Wimmershoff agreed to "entering into a Conditional Admission of Misconduct...essentially mirroring the 3 year [sic] suspension pursuant to my agreement with the Colorado Supreme Court."

15. Mr. Hersh drafted the Conditional Admission of Misconduct now before the Disciplinary Panel, and both the Committee Chair and Respondent executed the document, effective March 18, 2019.

16. Subcommittee B did not submit formal charges to the Disciplinary Panel under D.C.COLO.LAttyR 7(e)(3), which is incorporated in D.C.COLO.LAttyR 8(e).

## **II. The Conditional Admission of Misconduct Rule and Application**

17. Under D.C.COLO.LAttyR 8(e), “the Committee shall consider the facts and shall determine whether to submit formal charges to the Panel pursuant to D.C.COLO.LAttyR 7(e)(3).”

18. Subcommittee B determined under D.C.COLO.LAttyR 8(e) not to submit formal charges and instead opted to submit this stipulated Conditional Admission of Misconduct under D.C.COLO.LAttyR 7(g).

19. Under D.C.COLO.LAttyR 7(g), “[a] Respondent against whom formal charges have been made may tender to the Committee a conditional admission to the charges...in exchange for a stated form of discipline.” (emphasis added)

20. Although formal charges were not submitted as contemplated under D.C.COLO.LAttyR 7(g), Respondent can and has waived the requirement by stipulating in Paragraph 7 of the Conditional Condition of Misconduct that he “understands his right to process under the Local Rules of Practice of the United States District Court for the District of Colorado Attorney (“Local Rules”), and he enters this Stipulation willingly, voluntarily, and of his own free volition and right [and] waives the right to hearing, appeal, and the proof requirements under the Local Rules...”.

21. By executing the Conditional Admission of Conduct, Mr. Wimmershoff stipulates to the adoption of the findings of facts and conclusions of law entered by the Presiding Disciplinary Judge on October 11, 2017, specifically that Respondent violated Colo. RPC 8.4(b) and C.R.C.P. 251.5(b).

22. Judicial economy and the best interests of justice will not be served by imposing upon the Committee, the Clerk’s Office, the U.S. Marshals Service, Respondent, and the Disciplinary Panel the requirement that formal charges be tendered by the Committee, served by the U.S. Marshal

Service, answered by the Respondent, and approved by the Disciplinary Panel before Respondent and the Committee may tender a stipulated conditional admission of misconduct to the charges.

23. Respondent has acknowledged that he will not be eligible to seek reinstatement before the Bar of this Court until he has been reinstated to practice before the Colorado Supreme Court.

24. Respondent has further acknowledged that he will be required to satisfy all requirements of the Local Rules, including specifically D.C.COLO.LAttyR 11, before he can be reinstated to practice before this Court.

Based on the foregoing, it is therefore

ORDERED that Respondent, Nick Wimmershoff, is suspended from the practice of law before the United States District Court for the District of Colorado for period of three years.


It is further

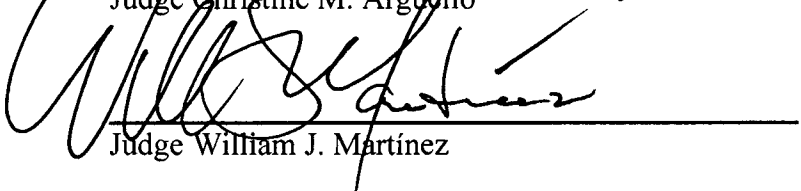
ORDERED that the suspension shall run concurrently with the suspension imposed by the Colorado Supreme Court.

Dated at Denver, Colorado, this 28 day of March, 2019.

BY THE DISCIPLINARY PANEL OF THE COURT:

  
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Chief Judge Philip A. Brimmer

  
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Judge Christine M. Arguello

  
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Judge William J. Martinez