

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

DISCIPLINARY ACTION NUMBER 17-DP-5

COMMITTEE ON CONDUCT,

Petitioner,

CHRISTOPHER J. POOLEY,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 03 2018

JEFFREY P. COLWELL
CLERK

CONDITIONAL ADMISSION OF MISCONDUCT AND
DISCIPLINE OF ATTORNEY CHRISTOPHER J. POOLEY

Before the Disciplinary Panel is the Conditional Admission of Misconduct filed by Respondent, Christopher J. Pooley, and a letter from the Chair for the Committee on Conduct expressing the unanimous support of all members of the Committee present and voting at the December 15, 2017 regularly scheduled meeting to the stipulated discipline to be imposed on Mr. Pooley, a Public Censure, in exchange for his admission of the following misconduct.

I. JURISDICTION, THE PARTIES, AND PROCEDURAL HISTORY

1. Respondent is an attorney licensed to practice law in the State of Colorado and is admitted to the Bar of the United States District Court for the District of Colorado. As such, Respondent has: consented to the jurisdiction of this Court; has certified that he is familiar with the local rules of the United States District Court for the District of Colorado; and has certified that he is familiar with the Standards of Professional Conduct adopted by the Court in D.C.COLO.LAttyR 2.

2. 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.

3. On July 23, 2015, the Honorable William J. Martinez, District Court Judge for the District of Colorado, submitted a formal letter of complaint against Mr. Pooley to the Committee, pursuant to D.C.COLO.LAttyR 7(a).

4. On October 19, 2015, the Committee served a copy of Judge Martinez's letter of complaint upon Respondent by certified mail, in accordance with D.C.COLO.LAttyR 7(d)(1).

5. Respondent filed his initial response on November 20, 2015, and a supplemental response on March 17, 2016.

6. On March 27, 2017, the Committee tendered charges against Mr. Pooley to the Disciplinary Panel, and the Panel ordered the Clerk to file the charges on April 11, 2017.

7. On May 30, 2017, the Summons, Charging Order, and a copy of the charges were served by the U.S. Marshal on Respondent.

8. Respondent filed his answer to the charges on July 6, 2017.

9. On July 25, 2017, the Disciplinary Panel notified the parties that they had 14 days to object to its order stating that neither discovery would be permitted nor an evidentiary hearing held given that there appeared to be no genuine issue of material fact to be resolved.

10. The position of the Committee regarding the July 25, 2017 order was filed on August 4, 2017; the position of Respondent was filed on August 8, 2017, and the matter was taken under advisement by the Disciplinary Panel.

11. Subcommittee D sought and was granted a 45-day stay of the proceedings on October 13, 2017, in order to negotiate with Respondent the agreed-upon terms of a Conditional Admission to be submitted by Respondent under D.C.COLO.LAttyR 7(g).

12. Subcommittee D and Respondent reached an agreement as to the terms of a Conditional Admission, and Subcommittee D presented the agreement to the full Committee on December 15, 2017, whose members voted unanimously to recommend to the Disciplinary Panel that it accept the Conditional Admission of Respondent in exchange for a Public Censure.

II. FACTUAL BACKGROUND

13. Respondent represented the plaintiff in Pelletier v. United States, Case No. 11-cv-1377-WJM-CBS. For the entirety of over four years of proceedings, the case was presided over by Judge Martinez.

14. The Pelletier litigation ended in the District Court with Judge Martinez's "Order Granting Defendant's Motion for Summary Judgment, Denying Plaintiff's Third Reconsideration Motion, Denying Plaintiff's Motion to Amend Their Summary Judgment Response, and Denying As Moot Plaintiff's Motion To Accept Untimely Exhibit," (ECF No. 157) issued on July 17, 2015. The procedural history of the case is outlined in detail in this order.

15. During the course of the proceedings, Respondent demonstrated that he was unfamiliar with the Federal Rules of Civil Procedure, the Local Rules for the Federal District Court for the District of Colorado, and Judge Martinez's Practice Standards by, among other things:

- a. The improper filing of a motion to amend a summary judgment response (ECF No 154 at 1) under Fed. R. Civ. P. 15(c)(1)(B), which does not apply to such an amendment.

b. The Submission of a response (ECF No. 150) to the defendant's summary judgment motion, that included a Statement of Additional Disputed Facts, but provided no evidentiary support for many of those "facts" in violation of Fed. R. Civ. P. 56(c)(1)(A).

c. The filing on July 15, 2015, of a "Motion Pursuant to Rule 15 to Submit Amended Plaintiffs' Response to Defendant's Motion for Summary Judgment" (ECF No. 154). The motion was untimely, Respondent did not seek an extension for "good cause" and/or "excusable neglect" as required by Fed. R. Civ. P. 6(b), and there were no grounds for such an extension.

d. Advancing arguments that had been previously and specifically resolved on the basis that exceptions to the doctrine of the law of the case and the mandate rule were applicable. These arguments were frivolous and vexatious.

III. COUNT I: VIOLATIONS OF RPC 1.1

16. Colo. RPC 1.1 provides that: "A lawyer shall provide competent representation to a client. Competent representation requires legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

17. Respondent violated this rule by filing a response (ECF No. 150) to the defendant's summary judgment motion, including a Statement of Additional Disputed Facts, which provided no evidentiary support for many of those "facts" in violation of Fed. R. Civ. P. 56(c)(1)(A) and Judge Martinez's WJM Revised Practice Standard III.E.6.

18. Respondent violated this rule by filing a motion to amend a summary judgment response (ECF No 154 at 1) under Fed. R. Civ. P. 15(c)(1)(B), which does not apply to such an amendment. The motion was untimely, Respondent did not seek an extension for "good cause"

and/or “excusable neglect” as required by Fed. R. Civ. P. 6(b), and there were no grounds for such an extension.

19. Respondent violated this rule by repeatedly advancing arguments previously and specifically resolved on the basis that exceptions to the doctrine of the law of the case and the mandate rule were applicable. These arguments were frivolous and vexatious.

IV. COUNT II: VIOLATIONS OF RPC 3.1

20. Colorado RPC 3.1 states in pertinent part: “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”

21. Respondent violated this rule by filing a response (ECF No. 150) to the defendant’s summary judgment motion, including a Statement of Additional Disputed Facts, which provided no evidentiary support for many of those “facts” in violation of Fed. R. Civ. P. 56(c)(1)(A) and Judge Martinez’s WJM Revised Practice Standard III.E.6.

22. Respondent violated this Rule by repeatedly advancing arguments previously and specifically resolved on the basis that exceptions to the doctrine of the law of the case and the mandate rule were applicable. These arguments were frivolous and vexatious.

V. COUNT III: VIOLATIONS OF RPC 3.2

23. Colorado RPC 3.2 states: “A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.”

24. Respondent violated this rule by filing a response (ECF No. 150) to the defendant’s summary judgment motion, including a Statement of Additional Disputed Facts,

which provided no evidentiary support for many of those “facts” in violation of Fed. R. Civ. P. 56(c)(1)(A) and Judge Martinez’s WJM Revised Practice Standard III.E.6.

25. Respondent violated this rule by filing a motion to amend a summary judgment response (ECF No 154 at 1) under Fed. R. Civ. P. 15(c)(1)(B), which does not apply to such an amendment. The motion was untimely; did not seek an extension for “good cause” and/or “excusable neglect” as required by Fed. R. Civ. P. 6(b), and there were no grounds for such an extension.

26. Respondent violated this rule by repeatedly advancing arguments previously and specifically resolved on the basis that exceptions to the doctrine of the law of the case and the mandate rule were applicable. These arguments were frivolous and vexatious.

VI. COUNT IV: VIOLATIONS OF RPC 8.4(a), AND 8.4(d)

27. Colorado RPC 8.4(a) provides that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct.

28. Colorado RPC 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

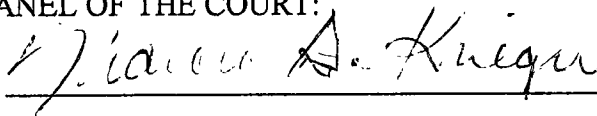
29. Respondent violated these rules by violating RPC 1.1, 3.1, and 3.2.

Based on the foregoing, it is therefore ORDERED that Christopher J. Pooley is PUBLICLY CENSURED.

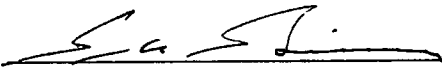
It is further ORDERED that the request by the Committee on Conduct for an enlargement of time beyond the forty-five day period for which the Disciplinary Panel issued a stay in this matter is GRANTED.

Dated at Denver, Colorado, this 3rd day of January, 2018.

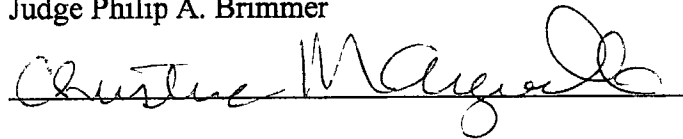
BY THE DISCIPLINARY PANEL OF THE COURT:



Chief Judge Marcia S. Krieger



Judge Philip A. Brimmer



Judge Christine M. Arguello