

*People v. Brian S. Mackenzie. 23PDJ070. May 29, 2024.*

The Presiding Disciplinary Judge approved the parties' stipulation to discipline and disbarred Brian S. Mackenzie (attorney registration number 29276), effective May 29, 2024.

In one client matter, Mackenzie filed a personal injury claim in November 2020 on behalf of a client, whom Mackenzie also represented in two other personal injury matters. Mackenzie failed to exercise diligence; he did not file expert disclosures, conduct discovery, exchange or file exhibit and witness lists, submit jury instructions, or prepare a draft trial management order. In addition, Mackenzie failed to respond to motions based on these deficiencies, including a motion to exclude expert testimony—which the presiding court granted—and a motion to dismiss for failure to prosecute. Mackenzie did not inform his client about these developments.

One week before the trial's start date, Mackenzie unsuccessfully moved to continue the matter. He did not inform his client that the trial was not continued. Four days before the start of trial, Mackenzie and his client failed to appear for the client's deposition. Mackenzie did not inform his client about the deposition date or that they were required to appear. That same day, the opposing party again moved to dismiss. Attached thereto was a voicemail transcription in which Mackenzie told opposing counsel that he would not appear at the deposition and invited opposing counsel to move to dismiss the case. On the first day of the trial, neither Mackenzie nor his client appeared, and the court dismissed the matter with prejudice. Ten days later, the court entered judgment against Mackenzie's client on all claims. Mackenzie took no action, and he did not inform his client that her case was dismissed and that judgment entered against her until October 2022. Nor did he return his client's file until December 2022 despite her earlier efforts to obtain the file. He also failed to communicate with the client about how settlement proceeds were handled and took no action as to some of those funds.

In another matter, Mackenzie failed to respond to a motion to dismiss based on his failure to provide proper notice of his client's personal injury claim under the Colorado Governmental Immunity Act, resulting in dismissal of the claim. Mackenzie did not inform his client about the motion until sixteen days after it was filed, and he did not respond to her attempts to communicate about the matter.

In a third matter, Mackenzie entered his appearance in a client's workers' compensation case in October 2020. After May 2022, Mackenzie and his staff stopped responding to the client's attempts to communicate, and Mackenzie did not complete work on his client's claim and did not withdraw from the matter.

Through this conduct, Mackenzie violated Colo. RPC 1.3 (a lawyer must act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a)(3) (a lawyer must keep a client reasonably informed about the status of the matter); Colo. RPC 1.4(a)(4) (a lawyer must promptly comply with reasonable requests for information); and Colo. RPC 1.16(d) (a lawyer must protect a client's interests upon termination of the representation, including by returning any papers and property to which the client is entitled). The case file is public per C.R.C.P. 242.41(a).