

**COLORADO SUPREME COURT, PRESIDING DISCIPLINARY JUDGE AND
HEARING BOARD**

People v. Bontrager

407 P.3d 1235 (Colo. O.P.D.J. 2017) · Decided April 20, 2017

SUMMARY

This Colorado attorney-discipline opinion concerns William D. Bontrager’s representation of clients in oil-and-gas lease disputes. The disciplinary tribunal found violations involving incompetent representation and frivolous claims in multiple litigations and appeals, warranting a nine-month suspension and restitution as a condition of reinstatement. The opinion also addresses claims involving mineral interests, recording priority, tribal sovereign immunity, and royalty disputes.

CASE DETAILS

COURT	Colorado Supreme Court, Presiding Disciplinary Judge and Hearing Board
WRITING FOR THE COURT	William R. Lucero, Presiding Disciplinary Judge; William R. Lucero; Lucy Hojo Denson; Robert A. Munson
JURISDICTION	Colorado
DECIDED	April 20, 2017
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding brought by the Office of Attorney Regulation Counsel alleging incompetent representation, frivolous litigation, inadequate client communication, and conduct prejudicial to the administration of justice in five client matters.
STANDARD OF REVIEW	The People were required to prove rule violations by clear and convincing evidence. The Hearing Board independently evaluated the evidence and did not give preclusive effect to findings in the underlying civil cases.
PRECEDENTIAL VALUE	Published disciplinary opinion; authoritative within the Colorado attorney-discipline proceeding and persuasive or limited as to the underlying substantive-law analysis.
PARTIES	People v. William D. Bontrager

TOPICS

oil and gas

mineral rights

tribal sovereignty

sanctions

appellate procedure

PRACTICE AREAS

legal ethics

oil and gas

mineral rights

tribal law

civil procedure

QUESTIONS PRESENTED

1. Whether Bontrager provided incompetent representation in the Adams, Martinez, Keith, Watson, and Cugnini matters in violation of Colo. RPC 1.1.
2. Whether Bontrager asserted or continued claims and defenses lacking a basis in law or fact, and lacking a good-faith argument for changing existing law, in violation of Colo. RPC 3.1.
3. Whether Bontrager failed to communicate material litigation risks and obtain informed client decisions in the Martinez matter in violation of Colo. RPC 1.4(a) and (b).
4. Whether Bontrager's conduct in the Keith, Watson, and Cugnini matters prejudiced the administration of justice in violation of Colo. RPC 8.4(d).
5. What sanction was appropriate in light of the duties violated, mental state, injury, and aggravating and mitigating factors.

HOLDINGS

1. Bontrager violated Colo. RPC 1.1 by pursuing and appealing claims that were barred by Colorado's race-notice recording statute, without developing evidence of notice and without complying with appellate procedural requirements.
2. Bontrager violated Colo. RPC 3.1 by filing and pursuing claims and an appeal without a factual or legal basis and without a good-faith argument for extending, modifying, or reversing existing law.
3. Bontrager violated Colo. RPC 1.1 and 3.1 by suing and continuing to sue the Southern Ute Indian Tribe without adequately researching tribal sovereign immunity, alleging an express waiver, or producing evidence of congressional abrogation or tribal waiver.
4. Bontrager violated Colo. RPC 1.4(a) and (b) by failing to inform the Martinez clients about the risks of proceeding against the Tribe and the possibility of liability for attorney fees and costs.
5. A lessor asserting breach of the implied covenant of reasonable development bears the burden of establishing that further development would be commercially profitable; a lessee must further develop a proven reservoir only when there is a reasonable expectation that additional wells would generate sufficient revenue to cover development costs and provide a reasonable profit.
6. The Parry settlement agreement unambiguously released claims alleging breach of implied covenants, failure to act in good faith, and failure to act as a prudent operator, including claims brought by successors to compensated class members.
7. Bontrager violated Colo. RPC 3.1 by continuing to pursue unsupported implied-covenant claims and Parry-related defenses after the lack of evidentiary and legal support became apparent, including through frivolous appeals.

8. Bontrager violated Colo. RPC 8.4(d) in the Keith, Watson, and Cugnini matters by persistently litigating frivolous claims and thereby causing unnecessary motions, appeals, and expenditure of judicial resources.

KEY QUOTATIONS

“His misconduct warrants a nine month suspension, ‘with the requirement that he pay restitution to his clients before petitioning for reinstatement under C.R.C.P. 251.29(c), if he wishes to resume the practice of law.” (1241)

“While attorneys certainly must be zealous advocates on behalf of their clients, Respondent’s stubborn advancement of his clients’ claims in the district and appellate courts exceeded those bounds.” (1277)

FACTUAL BACKGROUND

Bontrager represented five clients in oil-and-gas and mineral-rights disputes despite limited experience in oil and gas and Indian law. In the Adams matter, he pursued claims barred by Colorado's race-notice recording statute and failed to produce evidence of actual or constructive notice. In the Martinez matter, he sued a federally recognized Indian tribe without alleging or establishing an express waiver or congressional abrogation of tribal sovereign immunity. In the Keith, Watson, and Cugnini matters, he pursued implied-covenant and prudent-operator claims without adequately investigating profitability, ignored a prior settlement agreement releasing the claims, failed to respond properly to summary-judgment motions, and continued meritless appeals.

PROCEDURAL HISTORY

The People filed a disciplinary complaint on April 29, 2016. The Presiding Disciplinary Judge denied Respondent's motion to dismiss in part, dismissed the allegations concerning his pro se litigation, and conducted a January 2017 hearing with a three-member Hearing Board. The Hearing Board found multiple violations of the Colorado Rules of Professional Conduct and imposed a nine-month suspension with restitution as a condition of reinstatement.

DISPOSITION

other

CASES CITED

- Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc., 508 U.S. 49 (1993)
- Cash Advance and Preferred Cash Loans v. Colorado
- C&L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma
- Whitham Farms
- Gillette
- National Super Spuds, Inc. v. New York Mercantile Exchange
- Parry v. Amoco Production Co., n/k/a BP American Production Co., Case No. 94CV111, consolidated with 94CV105

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/colorado-colorado-supreme-court-presiding-disciplinary-judge-and-hearing-board/2017/people-v-bontrager-xas0fe1s>