SUPREME COURT OF INDIANA

In the Matter of David J. Colman

885 N.E.2d 1238 (Ind. 2008) · No. 53S00-0607-DI-248 · Decided May 14, 2008

SUMMARY

The Indiana Supreme Court found that attorney David J. Colman committed professional misconduct by participating in preparation of a will benefiting himself or his son, representing an elderly client despite a personal conflict, commingling client funds, entering an improper condominium transaction with a client, and charging an unreasonable fee. The Court suspended Colman from practicing law for at least three years, effective July 1, 2008, with reinstatement subject to specified requirements. Two justices dissented from the sanction and would have imposed disbarment.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Per curiam; Sullivan, J.; Boehm, J.; Rucker, J.; Shepard, C.J.; Dickson, J.
JURISDICTION	Indiana
DECIDED	May 14, 2008
DOCKET	53S00-0607-DI-248
DISPOSITION	other
PROCEDURAL POSTURE	Attorney discipline proceeding before the Supreme Court of Indiana based on the Indiana Supreme Court Disciplinary Commission's verified complaint and the hearing officer's report.
STANDARD OF REVIEW	The Supreme Court accepted the hearing officer's findings of fact after concluding that they were supported by the evidence.
PRECEDENTIAL VALUE	Published opinion; binding decision of the Supreme Court of Indiana on the disciplinary violations and sanction imposed.
PARTIES	Indiana Supreme Court Disciplinary Commission v. David J. Colman

TOPICS

guardianship procedure · guardianships · estate planning · probate

PRACTICE AREAS

legal ethics | attorney discipline | guardianship | estate planning | trust-account compliance

QUESTIONS PRESENTED

1. Whether Colman actively participated in preparing a will for a non-relative that gave him or his son a substantial gift in violation of Professional Conduct Rule 1.8(c).
2. Whether Colman represented G.A. despite a concurrent conflict of interest arising from his personal interest in property he stood to inherit while serving as G.A.'s guardian, in violation of Professional Conduct Rule 1.7(b).
3. Whether Colman violated the rules governing the segregation and trust-account handling of client funds by depositing M.M.'s money into a personal account.
4. Whether Colman's condominium transaction with M.M. violated Professional Conduct Rule 1.8(a) governing business transactions with clients.
5. Whether Colman charged an unreasonable fee in violation of Professional Conduct Rule 1.5(a).
6. What sanction was appropriate for the misconduct and disciplinary history.

HOLDINGS

1. A lawyer who actively participates in preparing a will for a non-relative that names the lawyer as primary beneficiary and the lawyer's son as contingent beneficiary violates Professional Conduct Rule 1.8(c).
2. A lawyer violates Professional Conduct Rule 1.7(b) by representing a client when the lawyer's personal interest in property the lawyer may inherit creates a concurrent conflict of interest, including when the lawyer initiates and advises the client regarding a guardianship and then serves as guardian.
3. A lawyer violates Professional Conduct Rule 1.15(a) and Admission and Discipline Rule 23(29)(a) by depositing client funds into a personal account and commingling those funds with the lawyer's own property.
4. A lawyer violates Professional Conduct Rule 1.8(a) by entering into a business transaction with a client on terms that are not fair and reasonable, are not fully and clearly disclosed, do not provide a reasonable opportunity to seek independent counsel, or lack the client's written consent.
5. A lawyer violates Professional Conduct Rule 1.5(a) by accepting property worth substantially more than the value of legal services rendered or to be rendered, particularly when the fee is based on speculative future services and is unreasonable under the circumstances.
6. For the aggregate misconduct, including conflicts involving a vulnerable client, improper handling of client funds, an improper business transaction, an unreasonable fee, multiple violations, prior discipline, and lack of remorse, a suspension of not less than three years is warranted, with reinstatement conditioned on compliance with the applicable reinstatement rules and proof of genuine remorse and understanding of professional ethical standards.

KEY QUOTATIONS

> *"Rather than seeing the relationship as one of undivided loyalty to the client, Respondent appears to view that relationship as a chance for personal financial gain wholly apart from compensation for legal services rendered whenever the opportunity arises."* (1244)

> *"The Court concludes Respondent should be suspended from the practice of law in this state for at least three years, after which he may be readmitted to the bar only if he proves by clear and convincing evidence, among other things, genuine remorse for his misconduct, a proper understanding of the ethical standards imposed on members of the bar, and his willingness to conduct himself in conformity with such standards."* (1244)

FACTUAL BACKGROUND

David J. Colman represented an elderly, vulnerable client, G.A., participated in preparing a will naming himself as primary beneficiary and his son as contingent beneficiary, and shortly thereafter initiated and served as guardian in a proceeding in which G.A. was alleged to be incapacitated. In a separate representation of M.M., Colman deposited $50,700 of the client's funds into his personal account and entered into a condominium transaction that purportedly compensated him for legal services without a clear valuation of those services, an appraisal, independent-counsel advice, or a timely assumption of the mortgage. The hearing officer found aggravating factors including a pattern of misconduct, selfish and dishonest motives, multiple violations, vulnerability of G.A., and Colman's refusal to acknowledge wrongdoing.

PROCEDURAL HISTORY

The Disciplinary Commission filed a three-count verified complaint on July 6, 2006. A court-appointed hearing officer, Leslie C. Shively, conducted an evidentiary hearing and filed findings on May 18, 2007. The Supreme Court accepted the supported findings, found multiple violations of the Indiana Rules of Professional Conduct and Admission and Discipline Rules, and imposed a suspension of not less than three years.

DISPOSITION

other

CASES CITED

- Matter of Colman, 476 S 55 (Ind. 1978)
- Matter of Colman, 53S00-9410-DI-981 (Ind. Sept. 29, 1995)
- Matter of Colman, 691 N.E.2d 1219 (Ind. 1998)
- Matter of Colman, 714 N.E.2d 125 (Ind. 1999)