

SUPREME COURT OF INDIANA

In the Matter of Stuart K. Baggerly

954 N.E.2d 447 (Ind. 2011) · No. No. 53S00-1106-DI-338 · Decided September 30, 2011

SUMMARY

The Indiana Supreme Court accepted Stuart K. Baggerly's consent to discipline after finding that he failed to competently and diligently represent clients, keep them informed, safeguard client funds, and promptly deliver funds owed to them. The Court suspended him from practicing law for 30 days, subject to automatic reinstatement conditions, and assessed the proceeding's costs against him.

CASE DETAILS

COURT	Supreme Court of Indiana
JURISDICTION	Indiana
DECIDED	September 30, 2011
DOCKET	No. 53S00-1106-DI-338
DISPOSITION	other
PROCEDURAL POSTURE	The Indiana Supreme Court Disciplinary Commission filed a verified complaint alleging professional misconduct. The respondent tendered an affidavit consenting to discipline under Indiana Admission and Discipline Rule 23(17), and the court accepted the consent and imposed discipline.
STANDARD OF REVIEW	The court reviewed the verified complaint and the respondent's affidavit of consent to discipline to determine whether professional misconduct occurred and what discipline should be imposed.
PRECEDENTIAL VALUE	Published disciplinary order

TOPICS

[sanctions](#)[remedies](#)[costs](#)

PRACTICE AREAS

[legal ethics](#)[professional discipline](#)[attorney-client relations](#)[client funds](#)

QUESTIONS PRESENTED

1. Whether the respondent engaged in professional misconduct by failing to competently and diligently represent clients, communicate with them, safeguard their property, and promptly deliver client funds.
2. Whether the respondent's belated restitution constituted a mitigating circumstance.
3. What discipline should be imposed for the admitted misconduct.

HOLDINGS

1. The respondent engaged in professional misconduct by violating Indiana Professional Conduct Rules 1.1, 1.3, 1.4(a), 1.15(a), and 1.15(d).
2. Restitution made after a client filed a grievance or after disciplinary proceedings were initiated does not qualify as a mitigating circumstance.
3. A thirty-day suspension from the practice of law, followed by automatic reinstatement subject to the applicable rule, was appropriate for the respondent's professional misconduct.

KEY QUOTATIONS

“Restitution made after a client has filed a grievance or after disciplinary proceedings are initiated does not qualify as a mitigating circumstance.” (954 N.E.2d at 447)

“However, the Court would have considered it an aggravating circumstance if Respondent had failed to make even belated restitution.” (954 N.E.2d at 447)

FACTUAL BACKGROUND

In 1998, Stuart K. Baggerly was retained to represent a father and his daughters regarding injuries from a car accident. After negotiating settlements, Baggerly lost or misplaced a \$5,000 check received in 2000 for one of the daughters and failed for ten to eleven years to respond to repeated requests for the funds. After the disciplinary complaint was filed, he paid the clients \$8,000 by cashier's check.

PROCEDURAL HISTORY

The Disciplinary Commission filed its verified complaint on June 10, 2011. After making restitution, Respondent submitted an affidavit of consent to discipline on July 26, 2011. The Indiana Supreme Court reviewed the complaint and affidavit, found professional misconduct, and imposed a thirty-day suspension.

DISPOSITION

other

CASES CITED

- Matter of Fairchild, 777 N.E.2d 726, 732 (Ind. 2002)
- Matter of Brown, 636 N.E.2d 1249, 1250 (Ind. 1994)
- Matter of Hanley, 627 N.E.2d 800, 801-02 (Ind. 1994)

OPINION

PER CURIAM.

954 N.E.2d 447 (2011) In the Matter of Stuart K. BAGGERLY, Respondent. No. 53S00-1106-DI-338. Supreme Court of Indiana. September 30, 2011. PUBLISHED ORDER ACCEPTING CONSENT TO DISCIPLINE AND IMPOSING DISCIPLINE The Indiana Supreme Court Disciplinary Commission filed a "Verified Complaint for Disciplinary Action" against Respondent. Respondent has tendered to this Court an affidavit of consent to discipline, pursuant to Indiana Admission and Discipline Rule 23(17), acknowledging that the material facts alleged in the complaint are true and consenting to discipline to be determined by this Court.

Having reviewed the complaint and the affidavit, the Court concludes that Respondent engaged in professional misconduct and imposes discipline on Respondent. Facts: In 1998, a father retained Respondent to represent him and his daughters in seeking damages for injuries they sustained in a car accident.

After Respondent negotiated a settlement of the three claims, he lost or misplaced a \$5,000 check he received in 2000 for one of the daughters. Over the next ten to eleven years, Respondent failed to respond to the clients' repeated requests for the funds.

The Commission filed its verified complaint on June 10, 2011, and reports that Respondent paid the clients \$8,000 by a cashier's check dated July 20, 2011. Respondent tendered his affidavit of consent to discipline on July 26, 2011. Restitution made after a client has filed a grievance or after disciplinary proceedings are initiated does not qualify as a mitigating circumstance.

See Matter of Fairchild, 777 N.E.2d 726, 732 (Ind.2002); Matter of Brown, 636 N.E.2d 1249, 1250 (Ind.1994); Matter of Hanley, 627 N.E.2d 800, 801-02 (Ind.1994). However, the Court would have considered it an aggravating circumstance if Respondent had failed to make even belated restitution. Violations: Respondent admits to violation of these Indiana Professional Conduct Rules prohibiting the following misconduct: 1.1: Failure to provide competent representation.

1.3: Failure to act with reasonable diligence and promptness. 1.4(a): Failure to keep a client reasonably informed about the status of a matter and respond promptly to reasonable requests for information. 1.15(a): Failure to hold property of clients properly in trust. 1.15(d): Failure to deliver promptly to a client funds the client is entitled to receive. Discipline: For Respondent's professional misconduct, the Court suspends Respondent from the practice of law for a period of 30 days, beginning November 11, 2011.

Respondent shall not undertake any new legal matters between service of this order and the effective date of the suspension, and Respondent shall fulfill all the duties of a suspended attorney under Admission and Discipline Rule 23(26). At the conclusion of the period of suspension,

provided there are no other suspensions then in effect, Respondent shall be automatically reinstated to the practice of law, subject to the conditions of Admission and Discipline Rule 23(4) (c).

The costs of this proceeding are assessed against Respondent. The hearing officer appointed in this case is discharged. *448 The Clerk is directed to forward a copy of this Order to the hearing officer, to the parties or their respective attorneys, and to all other entities entitled to notice under Admission and Discipline Rule 23(3)(d).

The Clerk is further directed to post this order to the Court's website, and Thomson Reuters is directed to publish a copy of this order in the bound volumes of this Court's decisions. All Justices concur.