INDIANA SUPREME COURT

In re Johnson

776 N.E.2d 360 (Ind. 2002) · Decided October 10, 2002

SUMMARY

The Indiana Supreme Court approved a conditional agreement disciplining an attorney who retained an excessive portion of an uninsured-motorist settlement, failed to provide the client with a written accounting, failed to promptly pay funds owed to the client, and did not respond to grievance inquiries. The Court imposed a 180-day suspension, with 60 days executed and 120 days stayed subject to two years of probation, and assessed costs against the respondent.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	All Justices
JURISDICTION	Indiana
DECIDED	October 10, 2002
DISPOSITION	approved
PROCEDURAL POSTURE	The Indiana Supreme Court reviewed a Statement of Circumstances and Conditional Agreement for Discipline submitted jointly by the Indiana Supreme Court Disciplinary Commission and the respondent attorney.
PRECEDENTIAL VALUE	published

TOPICS

uninsured motorist · insurance

PRACTICE AREAS

professional discipline · legal ethics · insurance · uninsured motorist

QUESTIONS PRESENTED

1. Whether the respondent violated Indiana's professional-conduct rules by charging an unreasonable fee and failing to provide an accounting and prompt payment of client funds.
2. Whether the respondent violated the professional-conduct rules by failing to refund an unearned fee and failing to cooperate with the Disciplinary Commission.

3. Whether the proposed conditional agreement and discipline should be approved.

HOLDINGS

1. The respondent violated Indiana Professional Conduct Rules 1.5(a), 1.5(c), 1.15(b), 1.16(d), and 8.1(b) by charging an unreasonable fee, failing to provide the required written distribution statement, failing to promptly pay or refund funds in which the client had an interest, and failing to respond to the Commission's written demands.
2. The court approved a 180-day suspension without automatic reinstatement, with 60 days executed and 120 days stayed subject to two years of probation.

KEY QUOTATIONS

> *"Had this case been litigated, this Court would have imposed a harsher sanction, but in light of the agreed resolution and the fact that the respondent has provided restitution to the client, we accept the agreed sanction."* (361)

FACTUAL BACKGROUND

A client retained the respondent to pursue damages from a traffic accident, and the fee agreement provided for a one-third contingent fee on amounts recovered by compromise. After the uninsured driver and vehicle caused the accident, the client's insurer paid the $50,000 uninsured-motorist policy limit; the respondent retained $30,000 after sending the client $20,000 and did not provide the required written settlement-distribution statement. He also twice failed to respond to the Commission's written demands concerning a grievance.

PROCEDURAL HISTORY

The Disciplinary Commission proceeded against the respondent based on alleged professional-conduct violations arising from his handling of a client's uninsured-motorist settlement and his failure to respond to grievance inquiries. The parties submitted agreed facts and a proposed suspension, which the Indiana Supreme Court approved.

DISPOSITION

approved

OPINION

In re Johnson 776 N.E.2d 360

PER CURIAM.

ORDER APPROVING STATEMENT OF CIRCUMSTANCES AND CONDITIONAL AGREEMENT FOR DISCIPLINE Pursuant to Ind. Admission and Discipline Rule 23, Section 11, the Indiana Supreme Court Disciplinary Commission and the Respondent have submitted for approval a Statement of Circumstances and Conditional Agreement for Discipline stipulating a proposed discipline and agreed facts as summarized below: Facts: A client hired the respondent to represent her in a claim for damages arising out of a traffic accident. The respondent's written fee agreement with the client provided that the respondent would receive one-third of all amounts recovered by compromise. Because the driver who caused the accident and the vehicle he operated were uninsured, the insurance company covering the vehicle in which the client was a passenger agreed to pay the policy limits, $50,000, of its uninsured motorist policy. The respondent received the insurance company check, forwarded $20,000 to the client and retained the balance for himself. He did not provide the client with a written statement setting forth the amount of money he received or its distribution. Subsequently, the respondent twice failed to respond to the Commission's demand for a response to a grievance filed against him. Violations: The respondent charged an unreasonable fee in violation of Ind. Professional Conduct Rule 1.5(a). The respondent violated Prof.Cond.R. 1.5(c), which requires a statement showing the disbursement to the client and its method of calculation. He violated Prof.Cond.R. 1.15(b) and 1.16(d), which require prompt payment to the client of funds in which the client has an interest and refunding any fee that has not been earned. Finally, the respondent violated Prof.Cond.R. 8.1(b), which provides that an attorney shall cooperate with the Commission's written demand for a response to a grievance. Discipline: A suspension from the practice of law for one hundred eighty (180) days, effective November 16, 2002, without automatic reinstatement. The first sixty (60) days of the suspension shall be served as an executed suspension from the practice of law, and the remaining one hundred twenty (120) days shall be stayed, and the respondent shall be placed on probation for a period of two (2) years. When the respondent completes the first sixty (60) days of his suspension, he will be conditionally reinstated to the practice of law, subject the terms and conditions of his probation as specified in the Conditional Agreement. Should it be established that the respondent violates the terms of his probation, then the stay of the stayed one hundred twenty (120) days of his suspension will be vacated and the respondent will serve the remaining one hundred *361twenty (120) days of his suspension, without automatic reinstatement. The Court, having considered the submission of the parties, now APPROVES and ORDERS the agreed discipline. Had this case been litigated, this Court would have imposed a harsher sanction, but in light of the agreed resolution and the fact that the respondent has provided restitution to the client, we accept the agreed sanction. Costs of this proceeding are assessed against the respondent. The Clerk is directed to provide notice of this order to the hearing officer and all parties as directed by Admis.Disc.R. 23(3)(d). All Justices concur.