

# INDIANA SUPREME COURT

## In re Voils

988 N.E.2d 261 (Ind. 2013) · Decided May 30, 2013

### SUMMARY

The Indiana Supreme Court approved a conditional agreement disciplining an attorney who failed to diligently pursue a life-insurance claim, return the client’s file, and timely respond to disciplinary authorities. The Court imposed a 30-day suspension with automatic reinstatement, subject to specified conditions, and assessed proceeding costs against the respondent.

### CASE DETAILS

|                    |                                                                                                                                                                                                               |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | Indiana Supreme Court                                                                                                                                                                                         |
| JURISDICTION       | Indiana                                                                                                                                                                                                       |
| DECIDED            | May 30, 2013                                                                                                                                                                                                  |
| DISPOSITION        | approved                                                                                                                                                                                                      |
| PROCEDURAL POSTURE | Attorney-discipline proceeding submitted to the Indiana Supreme Court under Indiana Admission and Discipline Rule 23(11) on a stipulated statement of circumstances and conditional agreement for discipline. |
| PRECEDENTIAL VALUE | Published disciplinary order                                                                                                                                                                                  |

### TOPICS

life insurance litigation insurance

### PRACTICE AREAS

legal ethics attorney discipline life insurance

### QUESTIONS PRESENTED

1. Whether Respondent violated Indiana Professional Conduct Rules 1.3, 1.16(d), and 8.1(b) based on the stipulated facts.
2. Whether the proposed thirty-day suspension with automatic reinstatement was appropriate discipline for the stipulated misconduct.

### HOLDINGS

1. Respondent violated Rule 1.3 by failing to act with reasonable diligence and promptness in pursuing the client's accidental-death insurance claim.
2. Respondent violated Rule 1.16(d) by failing promptly to return the client's file materials after termination of the representation.
3. Respondent violated Rule 8.1(b) by failing to respond timely to the Commission's demands for information concerning the grievance and subpoena duces tecum.
4. A thirty-day suspension from the practice of law, beginning July 12, 2013, with automatic reinstatement subject to Admission and Discipline Rule 23(4)(c), was approved as appropriate discipline.

#### KEY QUOTATIONS

*“However, in light of the Commission’s assessment that the proposed discipline is sufficient under the circumstances of this case, the Court now APPROVES and ORDERS the agreed discipline.”* (988 N.E.2d at 261)

*“For Respondent’s professional misconduct, the Court suspends Respondent from the practice of law for a period of thirty (30) days, beginning July 12, 2013.”* (988 N.E.2d at 262)

#### FACTUAL BACKGROUND

Respondent represented a client seeking accidental-death benefits under a life-insurance policy after the decedent died from carbon monoxide inhalation. The insurer denied the claim in 2005, and Respondent did little to pursue it despite the client's requests. After the client terminated the representation in 2009, Respondent failed to provide the client file promptly and also failed to timely respond to the Commission's demand for information and subpoena.

#### PROCEDURAL HISTORY

The Indiana Supreme Court Disciplinary Commission and Respondent submitted an agreed statement of facts and proposed discipline to the Indiana Supreme Court. The Court approved the agreement and imposed a thirty-day suspension with automatic reinstatement subject to the conditions of Admission and Discipline Rule 23.

#### DISPOSITION

approved

#### OPINION

PER CURIAM.

PUBLISHED ORDER APPROVING STATEMENT OF CIRCUMSTANCES AND CONDITIONAL AGREEMENT FOR DISCIPLINE Pursuant to Indiana Admission and Discipline Rule 23(11), the Indiana Supreme Court Disciplinary Commission and Respondent have submitted for approval a “Statement of Circumstances and Conditional Agreement for Discipline” stipulating agreed facts and proposed discipline as summarized below: Stipulated

Facts: Respondent represented Client in pursuing a claim for accidental death benefits under a life insurance policy.

The decedent died from carbon monoxide inhalation, which would not be covered unless it resulted from an occupational accident. Client gave Respondent information about a person for whom the decedent was working at the time of his death.

The insurance company denied the claim in 2005. Despite Client's requests, Respondent did little to press the claim against the insurance company. After Client fired Respondent in 2009, Respondent failed to comply with repeated requests from Client and her new counsel for her file.

After Client filed a grievance against Respondent, he failed to respond in a timely manner to the Commission's demand for a response to the grievance and to a subpoena duces tecum. The parties cite no facts in aggravation.

The parties cite the following facts in mitigation: (1) Respondent has no disciplinary history; (2) Respondent had physical and mental health problems at the time of the misconduct; and (3) Respondent has met with Indiana Judges and Lawyers Assistance Program, completed its program requirements, and is being treated by a neuropsychologist. Violations: The parties agree that Respondent violated these Indiana Professional Conduct Rules prohibiting the following misconduct: 1.3: Failure to act with reasonable diligence and promptness.

1.16(d): Failure promptly to return to a client case file materials to which the client is entitled after termination of representation. 8.1(b): Failure to respond in a timely manner to the Commission's demands for information. Discipline: The parties propose the appropriate discipline is a thirty (30) day suspension with automatic reinstatement.

The discipline imposed for Respondent's misconduct might have been more severe had this matter been submitted without the Commission's agreement to the proposed discipline. However, in light of the Commission's assessment that the proposed discipline is sufficient under the circumstances of this case, the Court now APPROVES and ORDERS the agreed discipline.

For Respondent's professional misconduct, the Court suspends Respondent \*262 from the practice of law for a period of thirty (30) days, beginning July 12, 2013. 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 Clerk is directed to forward a copy of this Order 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, except DAVID, J., who did not participate.