SUPREME COURT OF INDIANA

In the Matter of Daniel E. Moore

915 N.E.2d 973 (Ind. 2009) · No. No. 10S00-0905-DI-227 · Decided November 3, 2009

SUMMARY

The Indiana Supreme Court approved a conditional agreement imposing a public reprimand on Daniel E. Moore for charging an unreasonable fee and amending a client's fee agreement without advising the client to seek independent counsel. The misconduct arose from representation in a dissolution of marriage action, and one justice dissented, favoring suspension absent proof that excess fees were refunded.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Per curiam; Shepard, C.J.; Sullivan, J.; Boehm, J.; Rucker, J.; Dickson, J.
JURISDICTION	Indiana
DECIDED	November 3, 2009
DOCKET	No. 10S00-0905-DI-227
DISPOSITION	approved
PROCEDURAL POSTURE	Attorney disciplinary proceeding submitted to the Indiana Supreme Court for approval of a Statement of Circumstances and Conditional Agreement for Discipline.
PRECEDENTIAL VALUE	Published disciplinary order

TOPICS

dissolution of marriage · family law procedure · contracts · contract interpretation

PRACTICE AREAS

legal ethics · family law

QUESTIONS PRESENTED

1. Whether the Indiana Supreme Court should approve the parties' Statement of Circumstances and Conditional Agreement for Discipline.

2. Whether a public reprimand was an appropriate sanction for charging an unreasonable fee and amending a client fee agreement without the required advice and opportunity to obtain independent counsel.

HOLDINGS

1. The court approved the Statement of Circumstances and Conditional Agreement for Discipline.
2. For charging an unreasonable fee and entering into fee-agreement business transactions with a client without the required independent-counsel advice and opportunity, Moore received a public reprimand, and the proceeding's costs were assessed against him.

KEY QUOTATIONS

> *"The Court, having considered the submissions of the parties, now APPROVES and ORDERS the agreed discipline."* (915 N.E.2d at 974)

> *"For Respondent's professional misconduct, the Court imposes a public reprimand."* (915 N.E.2d at 974)

FACTUAL BACKGROUND

Moore represented a client in a dissolution of marriage action under an agreement providing that the client's $15,000 payment was his total flat or fixed fee. He later obtained an additional $5,000 and $1,500 from the client without advising her in writing to seek independent counsel before agreeing to amendments benefiting him. The parties stipulated that Moore charged an unreasonable fee and entered into prohibited business transactions with a client; they also stipulated that he had no prior disciplinary history and that there were no aggravating facts.

PROCEDURAL HISTORY

The Indiana Supreme Court Disciplinary Commission and Daniel E. Moore jointly submitted an agreed statement of facts and proposed discipline under Indiana Admission and Discipline Rule 23(11). The Supreme Court approved the agreement, imposed a public reprimand, assessed costs against Moore, and discharged any appointed hearing officer.

DISPOSITION

approved

OPINION

PER CURIAM.

915 N.E.2d 973 (2009) In the Matter of Daniel E. MOORE, Respondent. No. 10S00-0905-DI-227. Supreme Court of Indiana. November 3, 2009. 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 *974 agreed facts and proposed discipline as summarized below: Stipulated Facts: In May 2004, Respondent was retained by a client ("Client") to represent her in a dissolution of marriage action.

Client paid Respondent $15,000 pursuant to an agreement that this would be his total "flat" or "fixed" fee. By letter dated June 16, 2004, Respondent told Client: "My office agrees to accept your case in consideration of the payment of our minimum non-refundable retainer fee in the amount of $15,000...." Respondent diligently and competently worked on Client's case.

In May 2005, Respondent requested Client pay him an additional $5,000, which Client paid. In April 2006, Respondent requested Client pay him an additional $1,500, which Client paid in two installments. In neither instance did Respondent advise Client to consult with independent counsel before agreeing to amend the fee agreement to his advantage. Respondent has no prior disciplinary history, he was cooperative with the Commission, he is remorseful, and he has served as a volunteer in various community and legal organizations.

The parties agree there are no facts in aggravation. Violations: The parties agree that Respondent violated these Indiana Professional Conduct Rules prohibiting the following misconduct: 1.5(a) (2004): Charging an unreasonable fee. 1.8(a)(2) (2005): Entering into business transactions with a client (amendments of a fee agreement) unless the client is advised in writing of the desirability of seeking, and is given reasonable opportunity to seek, advice from independent counsel.

Discipline: The parties propose the appropriate sanction is a public reprimand. The Court, having considered the submissions of the parties, now APPROVES and ORDERS the agreed discipline. For Respondent's professional misconduct, the Court imposes a public reprimand.

The costs of this proceeding are assessed against Respondent. With the acceptance of this agreement, any hearing officer appointed in this case is discharged. SHEPARD, C.J., and SULLIVAN, BOEHM, and RUCKER, JJ., concur. DICKSON, J., dissents and would reject the agreement, believing a period of suspension is in order in the absence of any showing that Respondent refunded the fees received above his initial quote of $15,000 for a "flat" or "fixed" fee.

PER CURIAM.

PUBLISHED ORDER APPROVING STATEMENT OEF CIRCUM - STANCES AND CONDITIONAL AGREEMENT FOR DISCIPLINE Pursuant to Indiana Admission and Discipline Rule 238(11), the Indiana Supreme Court Disciplinary Commission and Respondent have submitted for approval a "Statement of Cireumstances and Conditional Agreement for Discipline" stipulat*974ing agreed facts and proposed discipline as summarized below: Stipulated Facts: In May 2004, Respondent was retained by a client ("Client") to represent her in a dissolution of marriage action.

Client paid Respondent $15,000 pursuant to an agreement that this would be his total "flat" or "fixed" fee. By letter dated June 16, 2004, Respondent told Client: "My office agrees to accept your case in consideration of the payment of our minimum non-refundable retainer fee in the amount of $15,000...." Respondent diligently and competently worked on Client's case.

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Discipline: The parties propose the appropriate sanction is a public reprimand. The Court, having considered the submissions of the parties, now APPROVES and ORDERS the agreed discipline. For Respondent's professional misconduct, the Court imposes a public reprimand.

The costs of this proceeding are assessed against Respondent. With the acceptance of this agreement, any hearing officer appointed in this case is discharged. SHEPARD, C.J., and SULLIVAN, BOEHM, and RUCKER, JJ., concur.