

SUPREME COURT OF INDIANA

In the Matter of Carolyn W. Rader

907 N.E.2d 966 (Ind. 2009) · No. 49S00-0807-DI-406 · Decided March 13, 2009

SUMMARY

The Indiana Supreme Court approved a conditional agreement imposing a public reprimand on attorney Carolyn W. Rader for failing to reasonably communicate with a client and the client's family during a post-conviction proceeding. The court's order concerned a matter involving delayed consideration of DNA evidence supporting the client's request for a new trial; separate opinions dissented as to the sufficiency of the sanction.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Per curiam; Chief Justice Shepard; Justice Sullivan; Justice Boehm; Justice Dickson; Justice Rucker
JURISDICTION	Indiana
DECIDED	March 13, 2009
DOCKET	49S00-0807-DI-406
DISPOSITION	approved
PROCEDURAL POSTURE	The Indiana Supreme Court reviewed a conditional agreement for discipline submitted by the Indiana Supreme Court Disciplinary Commission and Respondent under Indiana Admission and Discipline Rule 23(11).
PRECEDENTIAL VALUE	Published disciplinary order

TOPICS

[post-conviction relief](#)[criminal procedure](#)

PRACTICE AREAS

[legal ethics and professional responsibility](#)[attorney discipline](#)[post-conviction relief](#)[criminal procedure](#)

QUESTIONS PRESENTED

1. Whether Respondent violated Indiana Professional Conduct Rule 1.4(a)(2) by failing to reasonably consult with her client about the means of accomplishing the client's objectives.

2. Whether the conditional agreement proposing a public reprimand should be approved.

HOLDINGS

1. Respondent violated Indiana Professional Conduct Rule 1.4(a)(2) by failing to reasonably consult with her client about the means by which the client's objectives were to be accomplished.
2. The Court approved the conditional agreement, imposed a public reprimand for Respondent's professional misconduct, and assessed the costs of the proceeding against Respondent.

KEY QUOTATIONS

“For Respondent's professional misconduct, the Court imposes a public reprimand.” (966)

FACTUAL BACKGROUND

Respondent represented a client seeking post-conviction relief and a new trial based on DNA evidence introduced at a March 16, 2005, hearing. After the hearing, the client and his family repeatedly attempted to contact Respondent about expediting a ruling, but Respondent failed to communicate with them, although she sent two email inquiries to the magistrate. The petition was granted on March 8, 2007, and the client was released the following month; the parties stipulated that it was unknown whether consultation would have produced an earlier ruling and release. Respondent had no prior discipline and cooperated with the Commission.

PROCEDURAL HISTORY

Respondent represented a client in a post-conviction relief proceeding involving DNA evidence and a request for a new trial. The Disciplinary Commission and Respondent submitted stipulated facts, an agreed violation of Indiana Professional Conduct Rule 1.4(a)(2), and a proposed public reprimand. The Supreme Court approved the agreement, imposed a public reprimand, and assessed proceeding costs against Respondent; Justice Sullivan and Chief Justice Shepard dissented as to the adequacy of the sanction.

DISPOSITION

approved

OPINION

PER CURIAM.

907 N.E.2d 966 (2009) In the Matter of Carolyn W. RADER, Respondent. No. 49S00-0807-DI-406. Supreme Court of Indiana. March 13, 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 agreed facts and proposed

discipline as summarized below: Stipulated Facts: Respondent represented a client in a post-conviction relief proceeding.

At a hearing on March 16, 2005, DNA evidence was introduced in support of the client's assertion that he was entitled to a new trial on the charge of rape for which he was incarcerated. After the hearing, the client and his family repeatedly tried to contact Respondent about expediting a ruling, but Respondent failed to communicate with the client or his family.

Respondent, did, however, send two email inquiries to the magistrate who conducted the hearing. The client's petition was finally granted on March 8, 2007, and he was released from prison the following month. It is not known whether consultation between Respondent and the client would have resulted in an earlier decision and release. Respondent has no prior discipline and has cooperated with the Commission.

Violations: The parties agree that Respondent violated Indiana Professional Conduct Rule 1.4(a)(2), which required a lawyer to consult reasonably with a client about the means by which the client's objectives are to be accomplished. Discipline: The parties agree the appropriate sanction is a public reprimand.

The Court, having considered the submission 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. DICKSON, BOEHM, and RUCKER, JJ., concur. SULLIVAN, J., dissents and would reject the conditional agreement, believing the sanction to be insufficient.

SHEPARD, C.J., dissents with separate opinion. SHEPARD, Chief Justice, dissenting. Respondent represented a prisoner whom she believed was innocent of the rape for which he was incarcerated and she presented DNA evidence as evidence for her contention.

After this evidence was submitted at a hearing, everyone pretty much went about tending to other business, except for the imprisoned client and his family. While the judge and magistrate who held the matter under advisement *967 for two years bear the principal responsibility, Respondent's stewardship of the client's interests was a part of the overall fault.

My colleagues say that there is no way to know whether this failure to communicate with her client Harold Buntin and his family would have hastened a ruling and shortened the time wrongly spent in prison. I would like to think that the Court is wrong about that, and that a reasonable responsiveness to the client would have led to use of the tools available for obtaining a ruling.

I thus believe a short period of suspension is warranted.

PER CURIAM.

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have resulted in an earlier decision and release. Respondent has no prior discipline and has
cooperated with the Commission.

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The Court, having considered the submission 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. DICKSON, BOEHM,
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