

SUPREME COURT OF INDIANA

In the Matter of Daniel S. Kelly

917 N.E.2d 658 (Ind. 2009) · No. 49S00-0906-DI-263 · Decided December 3, 2009

SUMMARY

The Indiana Supreme Court found that Daniel S. Kelly committed professional misconduct in two criminal representations, including failures to communicate, appear, act diligently, and protect client information. The Court attributed some misconduct to depression and substance abuse but suspended Kelly from practice for at least six months without automatic reinstatement, effective January 15, 2010.

CASE DETAILS

COURT	Supreme Court of Indiana
JURISDICTION	Indiana
DECIDED	December 3, 2009
DOCKET	49S00-0906-DI-263
DISPOSITION	other
PROCEDURAL POSTURE	Original attorney-discipline proceeding in which the Indiana Supreme Court reviewed a hearing officer's report after the respondent failed to appear or respond to the disciplinary complaint.
STANDARD OF REVIEW	The Court reviewed the report of the appointed hearing officer; the opinion does not state a more specific standard of review.
PRECEDENTIAL VALUE	Published disciplinary order

TOPICS

remedies sanctions costs civil procedure

PRACTICE AREAS

legal ethics attorney discipline professional responsibility criminal defense

QUESTIONS PRESENTED

- Whether Respondent committed the professional-conduct violations alleged in the disciplinary complaint.

2. What discipline was appropriate for Respondent's misconduct, considering his failure to cooperate, lack of restitution, depression, and substance abuse.

HOLDINGS

1. Respondent violated Indiana Professional Conduct Rules 1.3, 1.4(a)(1), 1.4(a)(3), 1.4(a)(4), 1.4(b), 1.6(a), 1.16(a)(2), 3.2, and 8.4(d) through neglect of client matters, inadequate communication, unauthorized disclosure, representation while materially impaired, failure to expedite litigation, and conduct prejudicial to the administration of justice.
2. Respondent was suspended from the practice of law in Indiana for a minimum of six months without automatic reinstatement, effective January 15, 2010, subject to petitioning for reinstatement and satisfying specified conditions.

KEY QUOTATIONS

“Clients are entitled to protection regardless of a lawyer's personal condition.” (659)

“For Respondent's professional misconduct, the Court suspends Respondent from the practice of law in this state for a period of not less than six months, without automatic reinstatement, beginning January 15, 2010.” (659)

FACTUAL BACKGROUND

Respondent accepted fees to represent two criminal-defense clients but failed to communicate adequately, failed to appear for a bench trial, missed numerous status conferences, and arranged substitute appearances without one client's consent. He also failed to comply with orders to appear and show cause and could not be located for service. During the representations, Respondent was suffering from depression and substance abuse and knew that his professional abilities were impaired.

PROCEDURAL HISTORY

The Indiana Supreme Court Disciplinary Commission filed a verified complaint. After constructive service under Indiana Admission and Discipline Rule 23(12)(h), Respondent failed to appear or respond, and the hearing officer treated the complaint's allegations as true under Rule 23(14)(c). The Supreme Court reviewed the hearing officer's report, found professional misconduct, and imposed a suspension.

DISPOSITION

other

CASES CITED

- Matter of Stanko, 849 N.E.2d 1143, 1144 (Ind. 2006)

OPINION

In Re Kelly 917 N.E.2d 658

PER CURIAM.

917 N.E.2d 658 (2009) In the Matter of Daniel S. KELLY, Respondent. No. 49S00-0906-DI-263. Supreme Court of Indiana. December 3, 2009.

PUBLISHED ORDER FINDING MISCONDUCT AND IMPOSING DISCIPLINE

Upon review of the report of the hearing officer, the Honorable David A. Shaheed, who was appointed by this Court to hear evidence on the Indiana Supreme Court Disciplinary Commission's "Verified Complaint for Disciplinary Action," the Court finds that Respondent engaged in professional misconduct and imposes discipline on Respondent. Facts: After the Commission was unable to serve its verified complaint on Respondent at his address on the Roll of Attorneys, constructive service was made on him pursuant to Admis. Disc. R. 23(12)(h). Respondent did not appear or respond to the complaint. Accordingly, the hearing officer took the following facts alleged in the complaint as true. See Admis. Disc. R. 23(14)(c). Count 1. In 2005, Client 1 paid Respondent \$2,500 to represent her in a criminal matter. Respondent failed to communicate with Client 1, failed to appear at a bench trial, could not be located for service of an order to appear and show cause, and failed to comply with this order and a subsequent order to appear and show cause. Substitute counsel eventually appeared for Client 1. Count 2. Client 2 paid Respondent an initial retainer of \$500 to represent him in a criminal matter. In 2005 and 2006, Respondent failed to communicate with Client 2, attended only three of ten status *659 conferences in the case, and arranged for other counsel to appear for Client 2 at the other status conferences without Client 2's consent. When representing Clients 1 and 2, Respondent was suffering from depression and substance abuse and was aware his professional abilities were impaired. Facts in aggravation. (1) There is no evidence Respondent made restitution to Client 1; and (2) Respondent failed to cooperate in this disciplinary proceeding. Violations: The Court finds that Respondent violated these Indiana Professional Conduct Rules prohibiting the following misconduct: 1.3: Failure to act with reasonable diligence and promptness. 1.4(a)(1): Failure to promptly inform a client of any decision or circumstance with respect to which the client's informed consent is required. 1.4(a)(3): Failure to keep a client reasonably informed about the status of a matter. 1.4(a)(4): Failure to comply promptly with a client's reasonable requests for information. 1.4(b): Failure to explain a matter to the extent reasonably necessary to permit a client to make informed decisions. 1.6(a): Revealing information relating to representation of a client without the client's informed consent. 1.16(a)(2): Representation of a client when the lawyer's physical or mental condition materially impairs the lawyer's ability to do so. 3.2: Failure to expedite litigation consistent with the interests of a client. 8.4(d): Engaging in conduct prejudicial to the administration of justice (by failing to appear at hearings and causing the issuance of show cause orders). Discipline: It appears that Respondent's misconduct may have been caused in part by depression and substance abuse. However, "[c]lients are entitled to protection regardless of a lawyer's personal condition." Matter of Stanko, 849 N.E.2d 1143, 1144 (Ind.2006). Moreover, Respondent has provided no information

concerning any steps he may have taken to address his problems. For Respondent's professional misconduct, the Court suspends Respondent from the practice of law in this state for a period of not less than six months, without automatic reinstatement, beginning January 15, 2010. 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 minimum period of suspension, Respondent may petition this Court for reinstatement to the practice of law in this state, provided Respondent pays the costs of this proceeding, fulfills the duties of a suspended attorney, and satisfies the requirements for reinstatement of Admission and Discipline Rule 23(4). If reinstatement is sought, it would likely be granted only with the involvement of the Indiana Judges and Lawyers Assistance Program. The costs of this proceeding are assessed against Respondent. The hearing officer appointed in this case is discharged. All Justices concur.