

SUPREME COURT OF INDIANA

In the Matter of James R. Wiesneth, Jr.

961 N.E.2d 993 (Ind. 2011) · No. 84S00-1104-DI-231 · Decided December 9, 2011

SUMMARY

The Indiana Supreme Court approved a conditional agreement imposing a public reprimand on attorney James R. Wiesneth for neglecting a mortgage foreclosure matter, failing to communicate with the client, and failing to refund an unearned fee and return the case file. The Court assessed proceeding costs against Wiesneth, while Justices Dickson and Rucker considered the discipline insufficient.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Dickson, J.; Rucker, J.
JURISDICTION	Indiana
DECIDED	December 9, 2011
DOCKET	84S00-1104-DI-231
DISPOSITION	approved
PROCEDURAL POSTURE	The Indiana Supreme Court reviewed and approved a conditional agreement for discipline submitted by the Indiana Supreme Court Disciplinary Commission and Respondent.
PRECEDENTIAL VALUE	Published Indiana Supreme Court disciplinary order

TOPICS

foreclosure mortgages attorney fees civil procedure

PRACTICE AREAS

legal ethics attorney discipline mortgage foreclosure

QUESTIONS PRESENTED

1. Whether the stipulated facts established violations of Indiana Professional Conduct Rules 1.3, 1.4(a)(3) and (4), and 1.16(d).
2. Whether a public reprimand was the appropriate discipline for the admitted misconduct.

3. Whether the costs of the disciplinary proceeding should be assessed against Respondent.

HOLDINGS

1. The court approved the parties' agreement that Wiesneth violated Indiana Professional Conduct Rules 1.3, 1.4(a)(3) and (4), and 1.16(d) by neglecting the representation, failing to keep the client informed and respond to requests, failing to refund an unearned fee, and failing to return entitled case-file materials.
2. A public reprimand was approved and imposed as the appropriate discipline for Wiesneth's admitted misconduct.
3. The costs of the disciplinary proceeding were assessed against Wiesneth.

KEY QUOTATIONS

“The Court, having considered the submissions of the parties, now approves the agreed discipline and imposes a public reprimand for Respondent's misconduct.” (961 N.E.2d at 993)

FACTUAL BACKGROUND

In 2009, Wiesneth was retained by a mortgage holder for a flat fee to represent it in a mortgage foreclosure dispute. He failed to obtain service, neglected the matter, failed to respond to client communications, did not refund the unearned portion of the fee after termination, and failed to provide complete case-file materials to replacement counsel. After the Commission filed its verified complaint, he refunded \$900 to the client and accepted responsibility for his conduct.

PROCEDURAL HISTORY

The Disciplinary Commission and Wiesneth submitted a stipulated statement of circumstances and conditional agreement for discipline under Indiana Admission and Discipline Rule 23(11). The court approved the agreement, imposed a public reprimand, assessed proceeding costs against Wiesneth, and discharged the hearing officer.

DISPOSITION

approved

OPINION

PER CURIAM.

961 N.E.2d 993 (2011) In the Matter of James R. WIESNETH, Jr., Respondent. No. 84S00-1104-DI-231. Supreme Court of Indiana. December 9, 2011. 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: In 2009, a mortgage holder retained Respondent to represent it in a dispute with a debtor who was in arrears on his loan, paying Respondent a flat fee of \$1,500 for representation in a mortgage foreclosure action.

Thereafter, Respondent failed to obtain service, neglected the case, and failed to respond to numerous attempts by client to communicate with him about the case. After the client discharged him and retained replacement counsel. Respondent failed to refund any part of his fee and failed to turn over complete case file materials to replacement counsel.

After the client filed a grievance with the Commission, Respondent provided a letter and invoice to the client asserting that he had earned the entire fiat fee, despite not completing the representation. After the Commission filed its verified complaint. Respondent paid the client \$900 as a refund of the unearned portion of his fee.

The parties cite no facts in aggravation. The parties cite the following facts in mitigation: (1) Respondent has no disciplinary history; (2) Respondent accepts full responsibility for his actions. 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.

1.4(a)(3) and (4): Failure to keep a client reasonably informed about the status of a matter and respond promptly to reasonable requests for information. 1.16(d): Failure to refund an unearned fee upon termination of representation, and failure to return to a client case file materials to which the client is entitled after termination of representation. Discipline: The parties propose the appropriate discipline is a public reprimand.

The Court, having considered the submissions of the parties, now approves the agreed discipline and imposes a public reprimand for Respondent's misconduct. The costs of this proceeding are assessed against Respondent. With the acceptance *994 of this agreement, the hearing officer appointed in this case is discharged.

The Clerk is directed to forward a copy of this Order to the hearing officer, 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 DICKSON and RUCKER, JJ., who believe the discipline is insufficient in light of Respondent's admitted misconduct.