SUPREME COURT OF INDIANA

In re Gotkin

827 N.E.2d 554 (Ind. 2005) · Decided May 17, 2005

SUMMARY

The Indiana Supreme Court imposed a six-month suspension without automatic reinstatement on an attorney who misused client trust-account funds, failed to comply with trust-account reporting and recordkeeping requirements, made improper cash withdrawals, and failed to appear at a dissolution hearing. The court entered discipline based on the respondent's agreed facts and assessed the proceeding's costs against him.

CASE DETAILS

COURT	Supreme Court of Indiana
JURISDICTION	Indiana
DECIDED	May 17, 2005
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding submitted to the Indiana Supreme Court on the respondent's affidavit consenting to discipline and admitting the material facts alleged in the Disciplinary Commission's verified complaint.
PRECEDENTIAL VALUE	Published precedential disciplinary order

TOPICS

sanctions · remedies · civil procedure

PRACTICE AREAS

legal ethics · attorney discipline · trust accounts

QUESTIONS PRESENTED

1. Whether the respondent's admitted conduct violated the cited Indiana professional-conduct and admission-and-discipline rules.
2. What discipline should be imposed for the admitted trust-account violations, failure to comply with a tribunal obligation, criminal and dishonest conduct, and failure to appear at a hearing after an ungranted continuance motion.

HOLDINGS

1. Based on the agreed and admitted facts, the respondent violated Indiana Professional Conduct Rules 1.15(a), 3.4(c), 8.4(b), and 8.4(c), and Indiana Admission and Discipline Rules 23 and 28, including the trust-account, overdraft-reporting, recordkeeping, and prohibition-on-cash-check requirements.
2. The respondent should be suspended from the practice of law for six months, beginning July 1, 2005, without automatic reinstatement, and must pay the costs of the proceeding.

KEY QUOTATIONS

> *"For the misconduct found herein, this Court now finds that the respondent should be suspended from the practice of law for a period of six (6) months, beginning July 1, 2005, without automatic reinstatement thereafter."* (555)

FACTUAL BACKGROUND

The respondent's trust account declined from a positive balance of $90.28 to a negative balance of $573.68 while funds belonging to 60 clients were held without corresponding disbursements and disbursements were made for 102 clients for whom no trust funds were held. He used funds of one group of clients to satisfy the financial obligations of another group, made approximately $23,000 in improper cash withdrawals, failed to arrange overdraft reporting, and failed to maintain adequate trust-account records. In a separate dissolution matter, he filed a motion for continuance the day before the hearing, failed to verify that it had been granted, and did not appear at the hearing.

PROCEDURAL HISTORY

The Indiana Supreme Court Disciplinary Commission filed a verified complaint on July 2, 2003. The respondent submitted an affidavit consenting to discipline under Indiana Admission and Discipline Rule 28, section 17(a), and admitted the material facts. The Supreme Court imposed a six-month suspension without automatic reinstatement and assessed costs against the respondent.

DISPOSITION

other

OPINION

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PER CURIAM.
ORDER IMPOSING DISCIPLINE UPON AGREED FACTS
Pursuant to Ind.Admission and Discipline Rule 28, Section 17(a), the respondent has submitted to this Court his affidavit consenting to discipline in which he acknowledges the truth of the material facts set forth in the Indiana Supreme Court Disciplinary Commission's Verified Complaint for Disciplinary Action, filed July 2, 2003. The admitted facts are summarized as follows: | Facts: On January 1, 1998, respondent's trust account had a balance of $90.28. On June 30, 1998, it had a

negative balance of $573.68. Between these two dates, respondent received funds into his trust account from 60 clients for whom he made no disbursements as of June 30, 1998. Additionally, between these dates respondent made disbursements on behalf of 102 clients for whom he held no money in trust. Respondent inappropriately used the funds of one set of clients to satisfy the financial requirements of another set of clients. Of the disbursements made by respondent during this time, $23,000 was in the form of improper cash withdrawals. Further, respondent failed to notify his bank that the trust account was subject to overdraft reporting and failed to maintain adequate account records. In a separate incident, respondent filed a motion to continue a dissolution matter the day before the hearing and then failed to appear without determining whether the motion had been granted. The court had not granted the motion for a continuance. Violations: - The respondent violated Ind.Professional Conduct Rule 1.15(a), which requires lawyers to hold in trust client funds that come into the lawyer's possession; Prof.Cond.R. 3.4(c), which prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal; Prof.Cond.R. 8.4(b), which prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer; Prof.Cond.R. 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; Ind. Admission and Discipline Rule 28, Section 29(a)(1), which requires a lawyer to notify his bank that his trust account is subject to overdraft reporting; Admis.Disc.R. 23, Section 29(a)(2) and (3), which require a lawyer to create and maintain an adequate trust account ledger for five years; and Admis.Disc.R. 28, Section 29(a)(5), which prohibits a lawyer from writing checks from his trust account made payable to "cash". For the misconduct found herein, this Court now finds that the respondent should be suspended from the practice of law for a period of six (6) months, beginning July 1, 2005, without automatic reinstatement thereafter. Costs of this *555proceeding are assessed against the respondent. The Clerk of this Court is directed to forward a copy of this Order to the hearing officer and in accordance with the provisions of Admis.Disc.R. 28, Section 3(d). All Justices concur.