

INDIANA SUPREME COURT

In re Engebretsen

976 N.E.2d 1225 (Ind. 2012) · Decided October 29, 2012

SUMMARY

The Indiana Supreme Court finds that Respondent committed repeated professional misconduct, including neglecting client matters, failing to communicate, failing to protect clients upon termination, failing to refund unearned fees, and failing to cooperate with the Disciplinary Commission. The Court suspends Respondent from practicing law for at least three years without automatic reinstatement, assesses costs, and requires compliance with reinstatement requirements.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Indiana
DECIDED	October 29, 2012
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding arising from the Indiana Supreme Court Disciplinary Commission's verified complaint. The respondent did not answer the complaint or seek review of the hearing officer's report.
STANDARD OF REVIEW	When neither party challenges a hearing officer's findings, the Court accepts and adopts those findings but reserves final judgment on misconduct and sanction.
PRECEDENTIAL VALUE	Published disciplinary order; precedential Indiana Supreme Court decision

TOPICS

- administrative law
- agency adjudication
- remedies

PRACTICE AREAS

- legal ethics
- attorney discipline
- professional responsibility

QUESTIONS PRESENTED

1. Whether the uncontested hearing officer findings established violations of the Indiana Professional Conduct Rules.
2. What discipline was appropriate for Respondent's serial professional misconduct, given his prior suspensions, noncooperation, client harm, and lack of remorse.
3. Whether Respondent's possible medical problems excused or mitigated his professional misconduct.

HOLDINGS

1. Because neither party challenged the hearing officer's findings, the Court accepted and adopted those findings while reserving final judgment on misconduct and sanction.
2. Respondent violated Indiana Professional Conduct Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(b), 1.16(d), 3.2, 8.1(b), and 8.4(c).
3. Respondent's possible medical problems did not excuse the misconduct and did not warrant mitigation on the record presented.
4. Respondent was suspended from the practice of law in Indiana for not less than three years, without automatic reinstatement, effective immediately.

KEY QUOTATIONS

“When neither party challenges the findings of the hearing officer, “we accept and adopt those findings but reserve final judgment as to misconduct and sanction.”” (976 N.E.2d at 1226)

“Reinstatement is discretionary and requires clear and convincing evidence of the attorney’s remorse, rehabilitation, and fitness to practice law.” (976 N.E.2d at 1227)

FACTUAL BACKGROUND

Respondent engaged in a chronic and widespread pattern of neglect, including failing to perform legal work, communicate with clients, advise clients of limitations caused by medical problems, inform clients of orders and hearings, appear at hearings, protect clients' interests upon terminating representation, and refund unearned fees. He also failed to cooperate with the Disciplinary Commission and had a history of prior suspensions and noncooperation. The misconduct substantially harmed clients and damaged the public perception of the legal profession, and Respondent showed no remorse or willingness to pay restitution.

PROCEDURAL HISTORY

The Disciplinary Commission filed a six-count complaint alleging misconduct occurring from 2006 through 2011. Because Respondent did not respond, the hearing officer deemed the alleged facts admitted, found aggravating circumstances, and recommended discipline. Neither party petitioned for review, so the Indiana Supreme Court accepted and adopted the hearing officer's factual findings while independently determining misconduct and sanction.

DISPOSITION

other

CASES CITED

- Matter of Levy, 726 N.E.2d 1257, 1258 (Ind. 2000)
- Matter of Thomsen, 911 N.E.2d 575 (Ind. 2009)
- Matter of Eckert, 867 N.E.2d 141 (Ind. 2007)

OPINION

In re Engebretsen 976 N.E.2d 1225

PER CURIAM.

PUBLISHED ORDER FINDING MISCONDUCT AND IMPOSING DISCIPLINE

Upon review of the report of the hearing officer, the Honorable Thomas G. Fisher, 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: On November 2, 2011, the Commission filed a 106-paragraph complaint consisting of six counts alleging misconduct occurring from 2006 through 2011. The Commission charged Respondent with neglecting clients' cases, failing to do the work for which he was hired, failing to communicate with clients, failing to inform clients that medical problems would severely limit his ability to represent them, failing to inform clients of court orders and hearings, failing to appear at hearings and a pretrial conference, unilaterally terminating his representation of clients without protecting the clients' interests, failing to refund unearned fees, and failing to cooperate with the Commission. Respondent was served with the complaint and did not respond. Accordingly, the hearing officer took the facts alleged in the complaint as true. See Admis. Disc. R. 23(14)(c). The hearing officer found the following facts in aggravation: (1) Respondent has a history of noncooperation with the Commission and suspensions (described below); (2) he engaged in a chronic and widespread pattern of neglect that affected his clients, the courts, and other attorneys; (3) his misconduct severely damaged the public's perception of the profession; (4) his misconduct caused great harm to his clients, some of whom were extremely vulnerable due to incarceration or limited financial means; and (5) he has shown no remorse and has displayed utter indifference to paying restitution to his clients. Although there were indications that Respondent may have suffered from depression or other illness that contributed to his *1226misconduct, the hearing officer found the evidence to be insufficient to find any facts in mitigation. Neither party filed a petition for review of the hearing officer's report. When neither party challenges the findings of the hearing officer, "we accept and adopt those findings but reserve final judgment as to misconduct and sanction." Matter of Levy, 726 N.E.2d 1257, 1258 (Ind.2000). History of noncooperation and suspensions. Respondent has the following history of noncooperation with the

Commission and suspensions: 06S00-0807-DI-399: Show cause petition filed 07/21/08. Suspended for noncooperation 11/06/08. Reinstated on certificate of compliance 11/19/08. 06S00-0904-DI-159: Show cause petition filed 04/16/09. Dismissed with costs 5/12/09. Continuing legal education noncompliance suspension, 05/05/09; reinstated 5/18/09. Dues nonpayment suspension, 05/05/09; reinstated 5/18/09. Suspension order for failure to pay costs, 3/19/11. Still in effect. 06S00-1106-DI-346: Show cause petition filed 6/16/11. Suspended for noncooperation 9/2/11. Converted to indefinite suspension 5/25/12. Still in effect. 06S00-1109-DI-558: Show cause petition filed 9/14/11. Show cause order entered 9/19/11. Dismissed as moot due to other suspension 5/30/12. 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)(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. 1.16(d): Failure to protect a client's interests upon termination of representation. 1.16(d): Failure to refund an unearned fee upon termination of representation. 3.2: Failure to expedite litigation consistent with the interests of a client. 8.1(b): Failure to respond in a timely manner to the Commission's demands for information. 8.4(c): Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Discipline: Respondent's serial misconduct injured his clients and tarnished the reputation of the legal profession. Respondent is already under two suspension orders and failed to appear or in any way respond to the current charges against him. Although Respondent's medical problems may have contributed to his misconduct, such problems do not excuse misconduct, see *Matter of Thomsen*, 911 N.E.2d 575 (Ind.2009), and Respondent presented no evidence on the issue. Under these circumstances, to protect the public and the integrity of the legal profession, the Court concludes that Respondent should be suspended from the practice of law for not less than three years. See *Matter of Eckert*, 867 N.E.2d 141 (Ind.2007). For Respondent's professional misconduct, the Court suspends Respondent from the practice of law in this state for a period of not less than three years, without automatic reinstatement, effective immediately. 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). Reinstatement is discretionary and requires clear and convincing evidence of the attorney's remorse, rehabilitation, and fitness to practice law. See Admis. Disc. R. 23(4)(b). The costs of this proceeding are assessed against Respondent. 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 DAVID, J., who dissents regarding the discipline, believing it to be insufficient, and would disbar Respondent.

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