

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)

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