IN THE

Indiana Supreme Court

Supreme Court Case Nos. 20S-DI-27, 21S-DI-88

In the Matters of
P. Adam Davis,
Respondent.

Decided: November 15, 2021

Attorney Discipline Actions

Hearing Officer Clayton A. Graham

Per Curiam Opinion

Chief Justice Rush and Justices David, Massa, Slaughter, and Goff concur.

Per curiam.

These two matters are before us on the reports of the hearing officer appointed by this Court to hear evidence on disciplinary complaints filed by the Indiana Supreme Court Disciplinary Commission. Respondent's 2002 admission to this state's bar subjects him to this Court's disciplinary jurisdiction. *See* IND. CONST. art. 7, § 4.

In Case No. 20S-DI-27, Respondent has admitted, and we find, four rule violations arising from his trust account mismanagement and inadequate supervision of a paralegal. In Case No. 21S-DI-88, we find that judgment on the complaint was appropriately entered due to Respondent's failure to timely file an answer and, accordingly, that Respondent committed eight rule violations as charged arising from two client representations. For Respondent's misconduct in both cases, we conclude that Respondent should be suspended for at least one year without automatic reinstatement.

Procedural Background and Facts

The Commission filed its disciplinary complaint in Case No. 20S-DI-27 in January 2020. By the time the matter proceeded to final hearing in June 2021, the parties had entered into a written stipulation of facts, Respondent had admitted four of the five rule violations being pursued by the Commission, and only the fifth alleged rule violation remained contested.

Regarding the agreed violations, at relevant times Respondent was a solo practitioner and a paralegal was his sole employee. Respondent commingled his own funds with client funds in his trust account (mainly by failing to withdraw earned fees), and through his paralegal he made several cash withdrawals and non-client disbursements from the trust account. There is no evidence Respondent misappropriated or misapplied client funds.

Regarding the contested charge, the Commission alleged that Respondent knowingly failed to timely respond to a demand for information by the Commission. The parties stipulated to the facts

underlying this charge but disputed whether those facts established a knowing violation. The hearing officer, adopting the Commission's proposed report verbatim, concluded they did.

The Commission filed its initial disciplinary complaint in Case No. 21S-DI-88 in February 2021, and was granted leave to amend that complaint in April 2021. As amended, and as discussed in more detail below, the complaint alleged eight rule violations in connection with two client representations. After Respondent failed to timely file an answer, the Commission filed a motion for judgment on the complaint, which the hearing officer granted following a hearing on the motion.

No petition for review has been filed in Case No. 20S-DI-27, although the Commission has filed a brief on sanction. Respondent has filed a petition for review in Case No. 21S-DI-88, urging that judgment on the complaint be reversed, to which the Commission has responded. Both matters are now ripe for our consideration.

Discussion and Discipline

A. Judgment on the complaint is appropriate in Case No. 21S-DI-88.

Admission and Discipline Rule 23(14)(b) requires a respondent attorney to file an answer to a disciplinary complaint, or a written motion for extension of time, within thirty (30) days of service of the complaint**.** Respondent's answer to the amended disciplinary complaint filed by the Commission in Case No. 21S-DI-88, or a written motion for extension of time in which to file his answer, was due on or before May 21, 2021.

Respondent did not file an answer or a written extension request by this deadline, and he offers two alternative reasons for having failed to do so. First, he contends the hearing officer previously granted an extension to answer the amended complaint during a pretrial conference held prior to the filing of the amended complaint. However, the record reflects that the hearing officer did not grant an extension during this hearing but

merely indicated he would grant a motion for extension if one were filed. Nor could the hearing officer possibly have granted such an extension during this hearing, as no amended complaint had yet been filed and no deadline to answer that complaint yet existed.

Second, Respondent argues that even if the hearing officer did not grant an extension, Respondent reasonably believed that one had been granted and any neglect on his part was excusable. We disagree, both for the reasons expressed above and because there is absolutely no basis for Respondent's professed confusion about whether Rule 23(14)(b) requires an extension request to be in writing. The rule plainly does.

Where a respondent attorney does not timely answer a complaint, the Commission may file a motion for judgment on the complaint. Admis. Disc. R. 23(14)(c)(1). The respondent attorney may respond to that motion, and if he does, a hearing on the motion shall be held with adequate notice provided to the parties. Admis. Disc. R. 23(14)(c)(2). These procedures all were properly followed here.

In sum, the hearing officer did not err in granting the Commission's motion for judgment on the complaint.[1]

B. Respondent committed eight violations as charged in Case No. 21S-DI-88.

When judgment on the complaint is entered, the allegations set forth in the disciplinary complaint are conclusively established as true. Admis. Disc. R. 23(14)(c)(3).

[1] Respondent belatedly filed an answer one month after it was due. Not only was this answer untimely, it failed to comply with the substantive requirements of Rule 23(14)(b)(4), in particular the requirement that "[a]ll denials shall fairly meet the substance of the averments denied." For example, Respondent answered a substantial percentage of averments with the boilerplate language **"DENY AS THE DOCUMENT(S), RECORD, AND/OR OTHER ITEM(S) REFERENCED SPEAKS FOR THEMSELVES. THIS IS NOT WHAT WAS SAID"** (bold and capitalization in original) or slight variations thereon, even though many of these averments did not reference documents or anything being said.

Count 1. In 2011 Respondent filed suit on behalf of his "Clients," a limited liability company and its principals. The LLC's principals were "Father," "Daughter," and "Son-in-Law." Daughter and Son-in-Law's marriage was a sham though, and Son-in-Law had a wife and children in another state, facts Respondent was trying to keep hidden not only from the opposing parties but also from Father, his own client. The suit was filed against a would-be franchisee and its principals who resided in California, soon after the defendants pulled out of a franchise agreement due to Son-in-Law's attempt to unilaterally alter the agreement's terms by granting himself an ownership interest in the franchisee. The suit alleged nine counts, including among other things trademark infringement, fraud, and unfair competition. One of the defendants ("Muylle") counterclaimed against Clients for violations of California's franchising code and abuse of process and sought cancellation of the LLC's trademark registration. The abuse of process claim alleged, based on an admission by Son-in-Law, that Clients had filed suit "not to obtain a judgment on the merits but to cause the defendants to incur costs that will force them to go out of business."

Throughout the litigation, Respondent engaged in dilatory and oppressive practices that significantly drove up the cost and duration of proceedings, incurring three separate sanctions orders from the district court. Respondent's abusive tactics also included making scandalous and irrelevant accusations that one defendant had given his former girlfriends sexually-transmitted diseases and issuing subpoenas to two of those girlfriends.

The defendants ultimately were awarded summary judgment on seven of Clients' nine claims. Following a jury trial on Clients' remaining two claims and Muylle's abuse of process counterclaim, a jury found against plaintiffs on all counts and awarded damages to Muylle totaling $270,000. The court later awarded Muylle attorney fees totaling about $384,000 pursuant to the Lanham Act, which permits such a fee award where there has been an abuse of process in pursuing a trademark claim. Respondent pursued three different appeals to the Seventh Circuit, advancing largely groundless arguments and misrepresenting precedent, and the district court was affirmed in all respects. *See Wine & Canvas Development, LLC v. Muylle*, 868 F.3d 534 (7th Cir. 2017).

During the litigation, Clients – with Respondent's assistance – purported to transfer ownership of the trademarks and other intellectual property to a different LLC with the same principals, contingent upon the outcome of the litigation. Respondent did not notify the court or opposing counsel of the purported transfer, and indeed represented to the court that the LLC owned and was enforcing the trademarks. But when Muylle sought to enforce the judgment, Respondent asserted the LLC no longer owned the trademarks. Following a collection proceeding in Marion County on the trademark turnover issue, in which Respondent engaged in the same dilatory and abusive tactics, the court issued an "alter ego order" piercing the corporate veil. Shortly thereafter, Respondent withdrew his appearance, indicating that Daughter and Son-in-Law had asked him to withdraw. However, Respondent continued to file several motions in the matter and eventually initiated an appeal. The appeal was dismissed and pending motions were withdrawn in February 2020 when the parties reached a settlement, but trial court proceedings were reopened in late 2020 when Daughter and Son-in-Law failed to comply with the settlement agreement.

Muylle also initiated a collections action in Hamilton County, asserting a judicial lien against real property for which Daughter was the fee simple owner. Respondent filed an answer and counterclaim on Daughter's behalf, falsely alleging that Daughter had quitclaimed the property to her mother and attaching unexecuted, unrecorded documents purporting to show the same. Respondent also continued his pattern of dilatory tactics and frivolous arguments. The court eventually awarded summary judgment and a decree of foreclosure to Muylle when Respondent failed to respond to Muylle's summary judgment motion.

Count 2. A limited liability company ("GMRT") owned and operated a pizza restaurant. Two of GMRT's members ("Trisler" and "Koeppen") sought to sell GMRT to a buyer, but GMRT's third member ("McLean") objected to the sale. During sale negotiations, Respondent initially represented the buyer, but later began representing Trisler and Koeppen. McLean had never executed an operating agreement for GMRT, but during negotiations Respondent presented him with a fake agreement bearing his forged signature purporting to permit GMRT's sale upon

approval of a majority of its members.[2] The sale was completed over McLean's objection. During this process Respondent contacted McLean directly multiple times despite knowing McLean was represented by counsel.

McLean filed suit against Trisler, Koeppen, the buyer, and others in Hamilton County. Respondent filed an appearance on behalf of all defendants except GMRT, which was a nominal defendant. Extensive discovery misconduct by Respondent, as well as multiple false representations in motions for extensions of time, culminated in the trial court entering default judgment as to liability against all defendants as a sanction for defendants' and Respondent's misconduct.

The matter was set for a damages hearing. McLean renewed his efforts to compel discovery because the defendants held information McLean needed to determine his damages. Respondent continued to refuse to comply, and the trial court as a sanction barred the defendants from presenting any witnesses or evidence at the damages hearing. Following the hearing though, the court granted the defendants' motion for involuntary dismissal on grounds McLean could not prove damages.

McLean, defendants, and nominal defendant GMRT initiated separate appeals, which the Court of Appeals consolidated. Respondent filed several motions for extensions of time and similar relief, some of which were belated and of dubious veracity and one of which attempted to blame the Commission for Respondent's inability to timely file a brief. Ultimately the Court of Appeals allowed Respondent's belated brief to be filed. That brief did not comply with the Appellate Rules and was riddled with errors, unsupported and false factual assertions, and personal attacks on opposing counsel. After this brief was filed the defendants, through successor counsel, notified the Court of Appeals they had fired

[2] The real operating agreement, which had been executed by Trisler and Koeppen, required unanimous consent of all members to sell. The real operating agreement was produced by third parties during discovery over Respondent's objection.

Respondent and asked for leave to supplement their briefing. The Court of Appeals granted the request, ordered Respondent removed from the case, and referred the matter to the Commission. After re-briefing and some additional delays not relevant here, the Court of Appeals issued an opinion reversing the trial court and remanding for an award of damages and attorney fees. *McLean v. Trisler*, 161 N.E.3d 1259 (Ind Ct. App. 2020), *trans. denied*.

By his misconduct in these two client representations, the Court finds that Respondent violated the following Indiana Rules of Professional Conduct as alleged in the Commission's amended disciplinary complaint:

1.1: Failing to provide competent representation.

1.3: Failing to act with reasonable diligence and promptness.

1.7: Representing a client when the representation involves a concurrent conflict of interest.

3.1: Asserting a position for which there is no non-frivolous basis in law or fact.

3.2: Failing to expedite litigation consistent with the interests of a client.

4.2: Improperly communicating with a person the lawyer knows to be represented by another lawyer in the matter.

8.4(c): Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

8.4(d): Engaging in conduct prejudicial to the administration of justice.

C. Respondent committed four violations as admitted in Case No. 20S-DI-27, but the Commission has failed to clearly and convincingly prove a fifth violation.

For Respondent's trust account mismanagement and inadequate supervision of his paralegal, Respondent has admitted, and we find, violations of the following four rules:

> Ind. Professional Conduct Rule 1.15(a): Commingling client and attorney funds.
>
> Ind. Professional Conduct Rule 5.3(c): Ordering or ratifying the misconduct of a nonlawyer assistant.
>
> Ind. Admission and Discipline Rule 23(29)(c)(2): Paying personal or business expenses directly from a trust account, and failing to withdraw fully earned fees and reimbursed expenses from a trust account.
>
> Ind. Admission and Discipline Rule 23(29)(c)(5): Making cash disbursements from a trust account.

On the sole contested charge in Case No. 20S-DI-27, involving Respondent's alleged violation of Professional Conduct Rule 8.1(b), we "reserve final judgment as to misconduct" even in the absence of a petition for review. *See Matter of Levy*, 726 N.E.2d 1257, 1258 (Ind. 2000). We further observe that the Commission bears the burden of clearly and convincingly establishing that Respondent "knowingly" failed to respond to a demand for information by the Commission. Upon our review and consideration of the facts stipulated by the parties, we conclude the Commission has failed to meet its burden, and accordingly we find in Respondent's favor on this charge. For reasons explained in our sanction analysis below, we need not dwell further upon this.

D. Respondent's misconduct merits suspension of at least one year without automatic reinstatement.

The Commission acknowledges that Respondent's trust account mismanagement, which did not involve conversion or misappropriation of client funds, was not particularly serious in and of itself. Indeed, misconduct of this nature often garners a stayed suspension or reprimand. *See, e.g.*, *Matter of Remley*, 148 N.E.3d 298 (Ind. 2020); *Matter of Johnson*, 969 N.E.2d 5 (Ind. 2012). The Commission opines that noncooperation is a more serious matter, but we have found in Respondent's favor on this charge; and even had we found a Rule 8.1(b) violation, this likely would not have moved the sanction needle very far. *See, e.g.*, *Matter of Love*, 19 N.E.3d 251 (Ind. 2014); *Matter of Layson*, 798 N.E.2d 1289 (Ind. 2003).

Respondent's misconduct in Case No. 21S-DI-88 is an entirely different story. His client representations in both counts involved pervasive fraud, dishonesty, bad faith, obstreperousness, repetitive and frivolous filings, and gross incompetence. Our factual recitation in this opinion is but a brief distillation of 60 pages and 461 rhetorical paragraphs of allegations recited in the amended disciplinary complaint and conclusively established as true. Respondent has no prior discipline, but his pattern of misconduct in this case spanned nearly a decade and reflects factors that are endemic to Respondent's practice and not isolated lapses in judgment. Accordingly, suspension without automatic reinstatement is warranted.

We find *Matter of Stern*, 11 N.E.3d 917 (Ind. 2014), particularly instructive. The attorney in that case engaged in a similar pattern of misconduct in a client representation spanning several lawsuits and a similar lack of competence in representing himself during disciplinary proceedings, and we imposed an 18-month suspension without automatic reinstatement. Recognizing that the attorney in *Stern* had prior discipline for similar misconduct, whereas Respondent does not, we impose a one-year suspension without automatic reinstatement here.

Conclusion

The Court concludes that Respondent committed violations as charged in Case No. 21S-DI-88 and as admitted in Case No. 20S-DI-27. For Respondent's professional misconduct, the Court suspends Respondent from the practice of law in this state for a period of not less than one year, without automatic reinstatement, beginning December 27, 2021. Respondent shall not undertake any new legal matters between service of this opinion 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 these proceedings, fulfills the duties of a suspended attorney, and satisfies the requirements for reinstatement of Admission and Discipline Rule 23(18).

The costs of these proceedings are assessed against Respondent, and the hearing officer appointed in these cases is discharged with the Court's appreciation.

Rush, C.J., and David, Massa, Slaughter, and Goff, JJ., concur.

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