



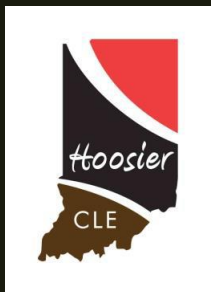
INDIANA ATTORNEY ETHICS UPDATE

2016 Indiana Legal & Ethics Conference

December 1



ADMISSION & DISCIPLINE RULE 23 AMENDMENTS



RULE 23 STATUS REPORT

- Streamline the procedure
 - Eliminate intermediate step in the investigation process
 - Time limit on the length of an investigation
 - Compress time to accomplish non-cooperation suspension
 - Re-structure flow of rule and progression from cradle to grave

- Changes effective **JANUARY 1, 2017**

RULE 23 STATUS REPORT

- Length of investigation = 1 year
 - *Time chargeable to defendant*
 - *DC can request extension of time*
- Accelerate docketing
- Accelerate non-cooperation
- Caution letters
 - *Codified what DC already does*
 - *Discretionary*
 - *Will there be impact on malpractice premiums?*
- Self-reporting of criminal convictions clarified

RENT-A-LICENSE CASES



THE RENT-A-LICENSE BUSINESS MODEL: DEBTOR RELIEF

- Out-of-state law firm or non-lawyer law related business. “National” law firm.
- Mortgage foreclosure and debt reduction matters
- Indiana lawyer enters appearance in Indiana cause of action
- Client pays fee to the “national” office. Signs ACH direct pay to “national” law firm to pay creditors
- Minimal flat fee for Indiana lawyer
- Front end consultation lacking. Lawyer rarely, meets/talks with client.
- Tell client to deal with the “national” office staff. No supervision of staff by IN lawyer.
- “National” office makes all decisions/negotiations for the debtor, which usually is none
- Strategy of motion for continuance or agreeing to default judgment. Bare minimum to keep case open as long as possible. Neglecting client.
- Lawyer claims client is the “national” firm and not the debtor (Dilk).

THE RENT-A-LICENSE BUSINESS MODEL: TRUST MILL

- Non-lawyer entity wants to sell estate plans, trust investments, insurance, annuities, pre-paid funeral, etc...
- Non-lawyer advertises or hosts an info meeting
- Hires lawyer to place name on docs to make it look legal
- Non-lawyer does all the work and collects the fee. Pays lawyer a nominal flat fee per customer for placing lawyer name on docs
- Lawyer does no work, no consultation, no review, no research, no meeting with client, does not attend info meeting.
- Ethics violation defense: True arms length transaction with lawyer. Gives independent advice, does work, does research, prepares docs, does not have exclusive referral arrangement, does not share lawyer's fee.

RENT-A-LICENSE CASES

- In re Gary Dilk, 2 N.E.3d 1263 (Ind. 2014)
 - *180 days w/out automatic reinstatement*
 - *Reinstated Aug. 2015*
- In re John Joyce, 9 N.E.3d 142 (Ind. 2014)
 - *180 days w/out automatic reinstatement*
 - *Reinstatement pending*
- Consumer Attorney Services, P.A., The McCann Law Group, LLP, and Brenda McCann v. State of Indiana, 53 N.E.3d 599 (Ind. App. 2016)
 - *Petition to Transfer pending, filed Aug 31, 2016*

RENT-A-LICENSE CASES

- In re Eric Jackson, 24 N.E.3d 419 (Ind. 2015)
 - *120 days w/automatic reinstatement*
- In re Justin Wall
 - *Pending, tried April 27-28, 35S00-1509-DI-0577*
- In re Divina Westerfield
 - *Pending, tried May 6, 45S00-1505-DI-0321*
- In re Pamela Fratini
 - *Debt relief. Charges approved Nov, 2016*
- In re Galen Kauffman
 - *Trust mill. Charges approved Nov, 2016*

DISBARMMENTS



DISBARMENT STATISTICS

- 2003-2013: 8 Disbarments
- Past 30 months: May 1, 2014 thru Nov 1, 2016
 - 11 disbarments
 - 6 dissents for disbarment
 - 2 reciprocal disbarments
 - 2 almost disbarments

TRUST ACCOUNT ENFORCEMENT

- In trust account matters in the past 30 months there have been:
 - 5 disbarments
 - 7 resignations
 - 8 suspensions without automatic reinstatement
 - 7 short suspension or stayed suspension with probation

DISBARMENT CASES IN PAST YEAR

- In re David Steele, 45 N.E.3d 777 (Ind. 2015)
- In re Elton Johnson, 53 N.E.3d 1177 (Ind. 2016)
- In re Tim Durham, 55 N.E.3d 302 (Ind. 2016)
- In re Joseph Lehman, 55 N.E.3d 821 (Ind. 2016)
- In re Harold Bean, 60 N.E.3d 1021 (Ind. 2016)

G. Michael Witte
Indiana Supreme Court
Disciplinary Commission

