

In the Indiana Supreme Court

In the Matter of: Mark R. Waterfill,
Respondent

Supreme Court Case No.
21S-DI-462



Published Order Approving Statement of Circumstances and Conditional Agreement for Discipline

Pursuant to Indiana Admission and Discipline Rule 23(12.1)(b), the Indiana Supreme Court Disciplinary Commission and Respondent have submitted for approval a “Statement of Circumstances and Conditional Agreement for Discipline” stipulating agreed facts and proposed discipline as summarized below.

Stipulated Facts: Respondent represented a businessman (“Seller”) who was negotiating to sell his company to a “Buyer.” Prior to Respondent’s representation, the parties had entered into an exclusivity agreement that limited Seller’s ability to negotiate with others for 150 days. Seller ultimately rejected Buyer’s final offer, and the sale did not go through. Respondent entered his last billing entry in the matter on November 25, 2015.

On November 27, 2015, Respondent, on behalf of a company he owned, sent a proposed purchase agreement to Seller. Although Seller was aware of Respondent’s affiliation with his company, Respondent did not advise Seller in writing that he was no longer Seller’s counsel and was not representing Seller in the proposed purchase agreement, nor did Respondent obtain Seller’s informed consent in writing. On November 30, Seller sought legal advice from Respondent regarding release from his exclusivity agreement with Buyer, which Respondent provided despite being materially limited by his own personal interest. Respondent and Seller consummated their agreement on December 4, 2015.

Violations: The parties agree that Respondent violated these Indiana Professional Conduct Rules prohibiting the following misconduct:

- 1.7(a)(2): Representing a client when the representation may be materially limited by the attorney’s responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.
- 1.9(a): Representing a client in a matter in which that client’s interests are materially adverse to the interests of a former client without the former client’s informed consent.

Discipline: The parties propose the appropriate discipline is a public reprimand. This discipline is consistent with that imposed in other cases involving similar misconduct. *See Matter of Bromund*, 165 N.E.3d 980 (Ind. 2021). The Court, having considered the submissions of the

parties, now approves the agreed discipline and imposes a **public reprimand** for Respondent's misconduct.

The costs of this proceeding are assessed against Respondent. Pursuant to the parties' stipulation, the Court hereby orders Respondent to pay \$457.41 by check made payable to the Clerk of the Indiana Supreme Court and transmitted to the Roll of Attorneys Administrator in the Office of the Clerk of the Indiana Supreme Court. Upon receipt, the Clerk is directed to disburse those funds as follows: (1) \$207.41, payable to the Commission as reimbursement for investigative expenses incurred; and (2) \$250.00, payable to the Clerk for court costs.

Done at Indianapolis, Indiana, on 10/28/2021.



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.