

In the Indiana Supreme Court

In the Matter of: Brian J. Oberst,
Respondent

Supreme Court Case No.
24S-DI-358



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: “Client” retained Respondent to represent him in a property dispute with neighbors. Respondent charged, and Client paid, a \$2,500 flat fee. After the neighbors filed suit against Client in December 2022, Respondent failed to timely appear or file an answer, and he was largely nonresponsive to Client’s inquiries during this period. When the neighbors eventually moved for a default judgment, Respondent filed an appearance but did not file an answer or seek to extend the deadline for doing so. Around the same time, Respondent renegotiated his fee agreement with Client to provide for hourly billing, without advising Client of his right to independent legal counsel, and Client ultimately paid Respondent an additional \$3,000 under the second fee agreement.

With leave of the court, Respondent filed a belated answer and counterclaim on Client’s behalf in July 2023, and the hearing on the motion for default judgment was continued several times. Respondent was largely nonresponsive to Client’s inquiries during this time and thwarted Client’s efforts to meet with him. Client fired Respondent by email in September 2023 and demanded a return of case materials, an accounting, and a refund of any unspent fees. Respondent did not respond to Client’s email or timely withdraw from the case.

In November 2023, successor counsel appeared on Client’s behalf, and the neighbors agreed to withdraw the motion for default judgment. Respondent finally withdrew his appearance in December 2023, but he still failed to return case materials to Client or provide an accounting to determine whether Client was due a refund of fees or expenses.

Respondent was suffering significant health issues during the time period at issue. He has been voluntarily engaged with the Indiana Judges and Lawyers Assistance Program (JLAP), has now “all but closed his law practice,” and is currently doing nonlegal work.

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

- 1.3: Failing to act with reasonable diligence and promptness.
- 1.4(a)(3): Failing to keep a client reasonably informed about the status of a matter.
- 1.4(a)(4): Failing to comply promptly with a client's reasonable requests for information.
- 1.8(a): Entering into a business transaction with a client unless the client is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel on the transaction.
- 1.16(a)(3): Failing to timely withdraw from representation after being discharged.
- 1.16(d): Failing to protect a client's interests upon the termination of representation.

Discipline: The Court, having considered the submission of the parties, now approves the following agreed discipline.

For Respondent's professional misconduct, the Court **suspends Respondent from the practice of law for a period of 90 days, beginning April 17, 2025, with 30 days actively served and the remainder stayed subject to completion of at least two years of probation under a mandatory JLAP monitoring agreement.** The Court incorporates by reference the terms and conditions of probation set forth in the parties' Conditional Agreement, which include among other things:

- (1) Respondent shall report to JLAP within 10 days of this order, and failure to do so shall be considered an act of contempt.
- (2) Respondent shall provide a copy of his JLAP monitoring agreement to the Commission.
- (3) Respondent shall sign or update any and all authorizations necessary for JLAP to implement the monitoring agreement, including an authorization for the Commission to obtain information from JLAP, and return a copy of that authorization to the Commission within 15 days of this order.
- (4) JLAP shall submit quarterly progress reports to the Commission.
- (5) Respondent shall refrain from alcohol and all controlled substances except as validly prescribed.
- (6) Respondent shall have no violations of the law or of the Rules of Professional Conduct during his probation.
- (7) Any lack of compliance by Respondent with his JLAP monitoring agreement shall be reported to the Commission, and Respondent shall report any violation of probation to the Commission in writing within 14 days.
- (8) If Respondent violates the terms of his probation, the stay of his suspension may be vacated and the balance of the stayed suspension may be actively served without automatic reinstatement.

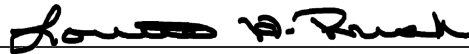
Respondent shall not undertake any new legal matters between service of this order and the effective date of the suspension, and Respondent shall fulfill all the duties of a suspended attorney under Admission and Discipline Rule 23(26). Notwithstanding the expiration of the minimum term of probation set forth above, Respondent's probation shall remain in effect until

it is terminated pursuant to a petition to terminate probation filed under Admission and Discipline Rule 23(16).

The costs of this proceeding are assessed against Respondent. Pursuant to the parties' stipulation, the Court hereby orders Respondent to pay \$278.30 by check made payable and transmitted to the Clerk of the Indiana Supreme Court. Upon receipt, the Clerk is directed to disburse those funds as follows: (1) \$28.30, payable to the Commission as reimbursement for investigative expenses incurred; and (2) \$250.00, payable to the Clerk for court costs. The expenses of the hearing officer will be submitted separately.

With the acceptance of this agreement, the hearing officer appointed in this case is discharged with the Court's appreciation.

Done at Indianapolis, Indiana, on 3/6/2025.

A handwritten signature in black ink, appearing to read "Loretta H. Rush", is written over a horizontal line.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.