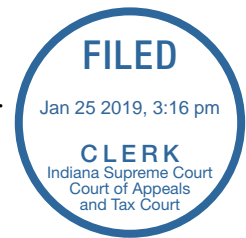


In the Indiana Supreme Court

In the Matter of: William B. Fecher,
Respondent

Supreme Court Case No.
98S00-1610-DI-552



Published Order Finding Misconduct and Imposing Discipline

Upon review of the report of the hearing officer, the Honorable John R. Pera, who was appointed by this Court to hear evidence on the Indiana Supreme Court Disciplinary Commission's "Amended Verified Complaint for Disciplinary Action," and the briefs of the parties, the Court finds that Respondent engaged in professional misconduct and imposes discipline on Respondent.

Facts: In early 2013 Respondent, who is a partner in a Cincinnati law firm, entered an appearance on behalf of a defendant ("Company") in a breach of contract action filed by "Plaintiff" in Lake County, Indiana ("Lake County Case"). Respondent then failed to timely comply with discovery, resulting in an award of \$800 in attorney fees to Plaintiff. Respondent and Company also failed to appear for court-ordered mediation, which led to show cause proceedings and a hearing that Respondent and Company also failed to attend. Respondent and Company were ordered to pay \$2,000 jointly and severally as a contempt sanction. After Plaintiff obtained summary judgment the trial court set the matter for a proceedings supplemental hearing, which Respondent and Company failed to attend. Additional show cause proceedings ensued, with Respondent and Company again failing to attend the hearing.

When the Commission undertook an investigation of this matter, Respondent failed to respond to the Commission's demand for information. This led to show cause proceedings in this Court and, eventually, Respondent's suspension for noncooperation. After Respondent had been suspended for six months, the Commission filed a motion to convert Respondent's noncooperation suspension to an indefinite suspension. As that motion was pending, Respondent finally complied, and the Court issued an order on August 11, 2015, terminating Respondent's noncooperation suspension.

Respondent's substantial experience in the practice of law is a fact in aggravation. Mitigating factors in this case include Respondent's remorse, lack of prior discipline, lack of dishonest or selfish motive, and efforts to rectify the consequences of his misconduct by, among other things, paying all monetary sanctions (including those directed toward Company) out of his own funds.

Violations: The Commission carries the burden of proof to demonstrate attorney misconduct by clear and convincing evidence. *See* Indiana Admission and Discipline Rule

23(14)(g). And while the review process in disciplinary cases involves a *de novo* examination of all matters presented to the Court, a hearing officer's findings nevertheless receive emphasis due to the unique opportunity for direct observation of witnesses. See Matter of Brizzi, 962 N.E.2d 1240, 1244 (Ind. 2012).

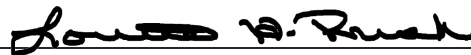
Respondent admits, and we find, that Respondent violated Professional Conduct Rule 8.1(b) by failing to timely respond to the Commission's demand for information. Respondent likewise does not contest the hearing officer's findings and conclusions that he violated Rules 3.4(c) and 8.4(d) by knowingly disobeying court orders in the Lake County Case, and we agree with and adopt those findings and conclusions as well.

The Commission also charged Respondent with a violation of Rule 1.16(a)(1), which in relevant part provides that "a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if . . . the representation will result in violation of the Rules of Professional Conduct[.]" The hearing officer concluded that Respondent did not violate this rule, and the Commission has filed a petition for review challenging this conclusion. Rule 1.16(a)(1) looks forward rather than backward; the rule is not implicated when a representation "did" result in professional misconduct but rather when a representation "will" result in misconduct. Upon careful review of the materials before us, we agree with the hearing officer that the facts and circumstances of this case do not provide grounds for finding a violation of Rule 1.16(a)(1). Accordingly, we find in favor of Respondent on this charge.

Discipline: The hearing officer recommended that Respondent be given a public reprimand. The Commission has not sought review of the hearing officer's findings relevant to sanction or filed a brief on sanction urging a different result, and a public reprimand is within the range of discipline imposed in other cases involving similar misconduct. See, e.g., Matter of Staples, 66 N.E.3d 939 (Ind. 2017). Accordingly, for Respondent's professional misconduct, the Court imposes a **public reprimand**.

The costs of this proceeding are assessed against Respondent. The hearing officer appointed in this case is discharged.

Done at Indianapolis, Indiana, on 1/25/2019.



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.