

In the  
Indiana Supreme Court

In the Matter of: Cody P. Cogswell,  
Respondent

Supreme Court Case No.  
19S-DI-135



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:** Count 1. Respondent represented the wife (“Client 1”) in a divorce. The parties’ mediated property settlement agreement that was incorporated into the dissolution decree divided the husband’s military pension retirement benefit. More specifically, the agreement required Respondent to prepare the required papers, with the husband ordered in the interim (for a period not to exceed six months) to make monthly payments directly to Client 1. The settlement agreement also required the husband to make equalization payments in several installments.

After more than six months passed, Respondent had not prepared the documents needed to effectuate Client 1’s share of the husband’s retirement benefit, and the husband ceased making the monthly payments to Client 1. Soon thereafter, the husband also failed to timely make a \$15,000 installment payment. Client 1 attempted repeatedly and unsuccessfully to contact Respondent about the status of her case.

Respondent eventually met with Client 1 and promised to complete the retirement paperwork and take action to have the husband held in contempt for failing to make the installment payment. However, Respondent did not take any further action to have the husband held in contempt. When Client 1 tried to advance her case with various *pro se* filings, the court referred those filings to Respondent and directed him to file an appropriate pleading before the court would take any action. Respondent did not confer with Client 1 about these developments or otherwise take any action, which left Client 1 unclear why her requests for relief had not been successful.

Count 2. Respondent represented “Client 2” in connection with a workplace sexual harassment matter, but Respondent turned over primary handling of the matter to his paralegal (“JB”). In November 2017, the Equal Employment Opportunity Commission issued Client 2 a Notice of Right to Sue. Client 2’s federal law claims were required to be filed within 90 days of

receipt of this notice, and the statute of limitation for any state law claims arising from the workplace sexual harassment was two years from the date of occurrences.

Client 2 contacted JB to confirm whether a lawsuit had been filed, and JB falsely told Client 2 that it had. Respondent did not communicate with Client 2 and did not adequately supervise JB's communications with Client 2. Respondent failed to file a lawsuit until after the relevant deadlines for state and federal law claims had passed, resulting in the eventual dismissal of all of Client 2's claims as untimely.

Respondent has no prior discipline, and after the events in Count 2 Respondent fired JB and paid \$15,000 in damages to Client 2 through Respondent's malpractice insurance carrier.

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

- 1.3: Failure to act with reasonable diligence and promptness.
- 1.4(a)(3): Failure to keep a client reasonably informed about the status of a matter.
- 1.4(a)(4): Failure to comply promptly with a client's reasonable requests for information.
- 1.4(b): Failure to explain a matter to the extent reasonably necessary to permit a client to make informed decisions.
- 3.4(c): Knowingly disobeying an obligation under the rules of a tribunal.
- 5.3(b): Failure to make reasonable efforts to ensure that the conduct of a nonlawyer employee over whom the lawyer has direct supervisory authority is compatible with the professional obligations of the lawyer.

**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 60 days, beginning on the date of this order, all stayed subject to completion of at least 12 months of probation.** The Court incorporates by reference the terms and conditions of probation set forth in the parties' Conditional Agreement, which include:

- (1) Respondent shall have no violations of the Rules of Professional Conduct of the Admission and Discipline Rules during his probation.
- (2) Respondent shall attend a six-hour applied professionalism course during his probation.
- (3) Respondent will read the *Fundamentals of Law Office Management: Systems, Procedures and Ethics, 5th Ed.*, and will certify same by providing a chapter-by-chapter summary to the Commission.
- (4) 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 with or without automatic reinstatement.

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 \$297.95 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) \$47.95, payable to the Commission as reimbursement for investigative expenses incurred; and (2) \$250.00, payable to the Clerk for court costs.

With the acceptance of this agreement, the hearing officer appointed in this case is discharged.

Done at Indianapolis, Indiana, on 4/7/2020.



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Loretta H. Rush  
Chief Justice of Indiana

All Justices concur.