

[Committee Home](#)[Archives](#)[Member Login](#)

## March 2014

Page: [1]-[2]-[3]-[4]-[5]-[6]-[7]-[8]

### In The News

#### **Taking payment from someone other than client may create risk of discipline**

*In re Dilk*, No. 49S00-0911-DI-534, 2014 Ind. LEXIS 130 (Ind. Feb. 10, 2014)

By Dina M. Cox, [dcox@lewiswagner.com](mailto:dcox@lewiswagner.com) and Neal Bowling, [nbowling@lewiswagner.com](mailto:nbowling@lewiswagner.com), Lewis Wagner, LLP, Indianapolis, IN

A recent Indiana Supreme Court decision addresses the dangers of a lawyer taking payment from someone other than the client and permitting the paying party to dictate the course of the representation. In *In re Dilk*, an Indiana lawyer accepted referrals from an Ohio company called "Foreclosure Solutions." For each referral, the lawyer would enter an appearance on behalf of a defendant in a foreclosure action, ask for an extension of time, and then consent to a judgment being entered against the defendant. The lawyer received a fee from Foreclosure Solutions for each case in which he entered an appearance.

The lawyer had no contact with many of the defendants on whose behalf he appeared, even though these defendants were his clients (much to the Supreme Court's aggravation, the lawyer appeared confused about who his clients were; he believed, quite mistakenly, that Foreclosure Solutions, rather than the defendants on whose behalf he appeared, was his client). When he did have contact with a client, he would advise them that his role was limited to monitoring and delaying the foreclosure proceedings and keeping the parties and Foreclosure Solutions informed about what was occurring in the cases. If a client advised him of potential defenses, the lawyer would not accept the case, or would withdraw his appearance. In one particular case, the clients provided the lawyer with information showing that they were not behind on their mortgage, and that the payments had been misapplied. Nonetheless, the lawyer failed to oppose the bank's motion for summary judgment, and allowed judgment to be entered against his clients. The lawyer took direction only from Foreclosure Solutions, and refused to consult with his clients as to the proper course of action in any particular case.

The Supreme Court found that the lawyer's conduct violated numerous Rules of Professional Conduct:

- 1.4(a): Failure to reasonably consult with a client about the means by which the client's objectives are to be accomplished and 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.
- 1.8(f): Accepting compensation for representing a client from one other than the client which interfered with the lawyer's independence of professional judgment and with the client-lawyer relationship.
- 3.2: Failure to expedite litigation consistent with the interests of a client.
- 5.4(a): Improperly sharing legal fees with a nonlawyer.

5.4(c): Permitting a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

5.5(a): Assisting in the unauthorized practice of law.

7.3(e): Improperly accepting referrals from a lawyer referral service.

8.4(d): Engaging in conduct prejudicial to the administration of justice.

For these violations, the lawyer received a six-month suspension without automatic reinstatement.

**Practice Note:** This case highlights the importance of identifying the client to the representation during potentially complex legal representation payment structures. Lawyers are advised to identify their clients and be mindful of the need to represent their interests when engaged in complex fee structures.

On a related note, reinstatement following a suspension without automatic reinstatement (SWAR) is quite an arduous process. To illustrate, of 119 Indiana lawyers who have received SWAR since 2000, only 22 have been reinstated.<sup>1</sup> The total time that a lawyer spends on suspension is generally at least double the amount of time listed on the Supreme Court's order. After applying for reinstatement, it may take anywhere between 8 and 16 months for a lawyer to be reinstated.

A lawyer seeking reinstatement following SWAR must petition the Indiana Supreme Court for reinstatement, pay the costs of the proceeding, fulfill the duties of a suspended lawyer, and satisfy the requirements for reinstatement of Admission and Discipline Rules 23(4) and 23(18). The requirements of Rule 23(4)(b) are long and include requirements such as taking the Multistate Professional Responsibility Examination (MPRE) within six months before or after the date of petition for reinstatement and passing with a scaled score of eighty or more. Moreover, reinstatement is discretionary and requires clear and convincing evidence of the lawyer's remorse, rehabilitation, and fitness to practice law.

---

<sup>1</sup> Marcia Oddi, *Ind. Courts – How Bad Is “Suspension Without Automatic Reinstatement” by the Supreme Court; Can It Be the Kiss of Death for an Attorney?*, Indiana Law Blog (Feb. 14, 2014), <http://www.indianalawblog.com/archives/2014/02/14/index.html>.