

On April 26, 2013, the Indiana Supreme Court issued a new disciplinary opinion, "*In The Matter of Robert L. Canada.*" The Supreme Court entered judgment for the RESPONDENT, finding no violation of the Rules, so no sanctions were imposed against Respondent. Attached is a scanned copy of the opinion as a "pdf."

Respondent was charged, by the Disciplinary Commission, with violating *Indiana Professional Conduct Rules 1.5(a), Making an agreement for, charging, or collecting an unreasonable fee; and 1.16(d), Failure to refund fees that have not been earned.*

Respondent, in solo practice, was retained by a client to represent him on a charge of Conspiracy to Commit Dealing in Meth (Class A Felony). Client told Respondent he wanted to resolve the case through a plea agreement.

Both the Client, and the Client's father, signed a fee agreement that said the case required a "flat fee" of \$10,000.00 to be paid from a cash bond posted by the Client's father. The agreement stated, "*This fee is non-refundable because of the possibility of preclusion of other representation, and to guaranty priority of access. The fee is non-refundable unless there is a failure to perform legal services.*"

Respondent then negotiated a plea agreement to reduce the charges to a Class B felony. Client "...initially viewed the plea offer favorably", but subsequently fired Respondent, and hired a new attorney to see if Client could get a better deal. Respondent withdrew. Respondent estimated he spent 20 hours working on client's case.

Client subsequently signed a similar plea agreement, still a Class B felony, negotiated by his new attorney.

The trial court released the \$10,000 cash bond to Respondent for his fee.

The hearing officer found the amount of the flat fee to be reasonable for the Evansville market for someone with Respondent's skill and experience. The Supreme Court's cautioned that Respondent should not have included the language regarding preclusion of other representation and guaranty of access, in his fee agreement, as that language is more appropriate if the fee was for a "...general retainer" not a flat fee.

The other issue was whether Respondent improperly collected and failed to refund an unearned part of the fee. Since the Client made it clear, from the beginning of the case, that the Client wanted a plea agreement, and Respondent spent a "...considerable amount of time on the case and negotiated a plea agreement that the Client initially viewed with favor," then Supreme Court found that the Disciplinary Commission failed to prove, by clear and convincing evidence, that Respondent failed to earn his flat fee. See *Admin. Disc. R. 23(14)(i)*, and *Matter of O'Farrell*, 942 N.E.2d 799 (Ind. 2011) (*record insufficient to prove that some amount of flat fee was unearned when the attorney/client relationship ended before work was completed.*).

Hearing officer discharged. No sanctions imposed against Respondent.

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For more new ethics cases, consider attending the Indiana State Bar Association's Small-Solo Conference in French Lick from June 6 - 8. Want to learn more about the conference?

Sincerely,

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