

# In the Indiana Supreme Court

In the Matter of: Zachary S. Kester,  
Respondent

Supreme Court Case No.  
24S-DI-153



## Published Order Finding Misconduct and Imposing Discipline

Upon review of the report of the hearing officer, the Honorable Robert C. Reiling, Jr., who was appointed by this Court to hear evidence on the Indiana Supreme Court Disciplinary Commission's "Disciplinary Complaint," and the briefs of the parties, the Court finds that Respondent engaged in professional misconduct and imposes discipline on Respondent.

**Facts:** At all relevant times, Respondent was the managing attorney, and either the executive director or the chief executive officer, of Charitable Allies, Inc. ("CA"). CA markets itself as a "nonprofit for nonprofits" that provides "low bono" legal services for nonprofits.

In October 2019, the Down Syndrome Association of Northwest Indiana, Inc. ("DSA"), by its interim executive director ("Longo"), retained CA after discovering that DSA's former executive director and his wife (collectively "the Buckleys") had misappropriated funds from DSA. DSA made clear to CA that its ability to pay legal fees would be limited given its small operating budget and cash reserves.

The retainer agreement provided that CA would represent DSA in various matters. The hourly rates contemplated by the retainer agreement were \$130-245 for attorney and consultant time, \$100-150 for legal intern and paralegal time, and \$50-95 for legal assistant time. These rates ostensibly represented about 50% of fair market value. The agreement also included a fee-shifting provision that allowed CA to pursue, where applicable and "upon successful completion of the matter," an attorney fee award "against the government." The provision indicated "any such fees and costs recovered belong to Attorney, sans any payment(s) made by Client to Attorney under this contract."

In June 2020, criminal charges were filed against the Buckleys. In December 2020, Respondent filed a "State Action" on behalf of DSA and against the Buckleys. In May 2021, Respondent appeared on behalf of DSA in a "Federal Action" filed by the Buckleys' insurer seeking a declaratory judgment. Neither the State nor the Federal Action was particularly complex.

During the summer of 2021, CA sent monthly invoices to DSA, and Longo repeatedly raised concerns about the high amounts being billed, which were in excess of the monthly amount Longo had indicated DSA could afford. In September 2021, Respondent wrote to Longo, "Recall that you will receive an award of attorney fees as a part of the litigation, so all

state court civil attorney fees should be reimbursed as a part of the judgement.” Respondent also sent Longo a “Litigation Report” that stated DSA had been billed \$28,667.40 for work on the State Action and \$8,635 for work on the Federal Action, both of which were still in the early stages of litigation. The report estimated future fees of \$60,000 and \$47,500 respectively to see the State and Federal Actions through to completion.

Longo fired CA in October 2021 and retained successor counsel. After the dust settled on this transition, DSA had paid all fees due to CA except for about \$1,200.

In January 2022, and without prior notice to DSA, Respondent filed a notice of attorney fee lien in the State Action claiming an equitable lien “up to and including \$56,341.44” plus interest. This sum purportedly represented the difference between what CA had already billed DSA and the alleged fair market value of CA’s fees that CA would have pursued as a fee award if the State Action were successful. The notice of lien relied on the fee-shifting provision of the retainer agreement, but the notice did not directly quote or accurately paraphrase that provision and did not mention that the provision only applied to claims “against the government.”

DSA’s successor counsel moved to remove the lien, and Respondent responded by moving to disqualify successor counsel. Following a hearing, the court denied the motion to disqualify and granted the motion to remove the lien. Respondent initiated an appeal of that interlocutory order. As that appeal was pending, DSA and the Buckleys reached a settlement and moved to dismiss the State Action. Meanwhile, Respondent filed an appellant’s brief arguing the notice of lien was proper and the trial court lacked personal and subject matter jurisdiction to remove the lien. In November 2022, the Court of Appeals issued a memorandum decision finding Respondent’s arguments lacked cogent reasoning, affirming the trial court’s order, and remanding with instructions for the trial court to determine and award DSA a reasonable amount for appellate attorney fees. *Charitable Allies, Inc. v. Down Syndrome Association of Northwest Indiana, Inc.*, 22A-PL-1111 (Ind. Ct. App. Nov. 1, 2022), *trans. not sought*. On remand, CA paid DSA the agreed sum of \$10,740 in appellate attorney fees and an additional sanction of \$7,320 imposed by the trial court.

CA, by Respondent, separately sued DSA’s successor counsel for having allegedly interfered with DSA’s purported obligation to pursue fair-market-value fees on CA’s behalf. CA dismissed its claims after the Court of Appeals issued its decision in *Charitable Allies*. Successor counsel’s counterclaims against CA were resolved by a mediated settlement.

In April 2023, DSA sued Respondent and CA. That suit was settled for \$75,000.

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

- 1.5(a): Charging and collecting an unreasonable fee.
- 3.1: Asserting a position for which there is no non-frivolous basis in law or fact.
- 8.4(a): Attempting to charge or collect an unreasonable fee.
- 8.4(d): Engaging in conduct prejudicial to the administration of justice.

**Discipline:** For Respondent’s professional misconduct, the Court **suspends Respondent from the practice of law for a period of 60 days, effective October 1, 2025**. 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). At the conclusion of the period of suspension, provided there are no other suspensions then in effect, Respondent shall be automatically reinstated to the practice of law, subject to the conditions of Admission and Discipline Rule 23(18)(a).

The costs of this proceeding are assessed against Respondent. The hearing officer appointed in this case is discharged with the Court's appreciation.

Done at Indianapolis, Indiana, on 9/26/2025.

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.