

SUPREME COURT OF INDIANA

In the Matter of Anonymous

929 N.E.2d 778 (Ind. 2010) · No. No. 73S00-0812-DI-626 · Decided July 1, 2010

SUMMARY

The Supreme Court of Indiana approved a conditional agreement imposing a private reprimand on an attorney who employed an incarcerated nonlawyer legal assistant in connection with a post-conviction proceeding. The Court concluded that the attorney violated Professional Conduct Rule 5.3 because the circumstances made adequate supervision and compliance with professional obligations impossible.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Indiana
DECIDED	July 1, 2010
DOCKET	No. 73S00-0812-DI-626
DISPOSITION	approved
PROCEDURAL POSTURE	Attorney discipline proceeding submitted to the Indiana Supreme Court on the parties' stipulated Statement of Circumstances and Conditional Agreement for Discipline.
PRECEDENTIAL VALUE	Published precedential opinion

TOPICS

post-conviction relief

PRACTICE AREAS

legal ethics

attorney discipline

post-conviction relief

QUESTIONS PRESENTED

1. Whether Respondent violated Indiana Professional Conduct Rule 5.3 by retaining an incarcerated, independent nonlawyer legal assistant whom Respondent could not adequately supervise.
2. What discipline was appropriate for the misconduct.

HOLDINGS

1. Respondent violated Professional Conduct Rule 5.3 because his employment of an incarcerated, independent legal assistant made it impossible for him to exercise the required supervision and ensure that the assistant's conduct was compatible with Respondent's professional obligations.
2. A private reprimand was appropriate under the agreed discipline, considering the age of the misconduct, Respondent's cooperation, lack of disciplinary history, good reputation, and otherwise unblemished record.

KEY QUOTATIONS

“A non-lawyer assistant shall perform services only under the direct supervision of a lawyer authorized to practice in the State of Indiana and in the employ of the lawyer or the lawyer's employer. Independent non-lawyer assistants, to-wit, those not employed by a specific firm or by specific lawyers are prohibited.” (780)

“In this case, Respondent's employment of an incarcerated legal assistant made it impossible for Respondent to supervise properly the assistant's work, to prevent client confidences from being compromised, and to ensure that the inmate would be able to comply with the Rules of Professional Conduct.” (780)

“The Court therefore APPROVES and ORDERS the agreed discipline. For Respondent's professional misconduct, the Court imposes a private reprimand.” (780)

FACTUAL BACKGROUND

Respondent represented a client in a post-conviction relief proceeding as an independent contractor for the State Public Defender. With the client's consent, Respondent arranged for an incarcerated nonlawyer inmate in the same facility to research and prepare the client's PCR petition in exchange for Respondent's representation of the inmate in the inmate's own PCR proceeding. Because the inmate was an independent legal assistant with limited communications, privacy, and research access, Respondent could not adequately supervise the work, protect client confidences, or ensure compliance with professional-conduct rules.

PROCEDURAL HISTORY

The Indiana Supreme Court Disciplinary Commission filed a verified complaint in 2008 concerning conduct occurring in 1998 and 1999. The Commission and Respondent submitted an agreed statement of facts and proposed discipline for the Court's approval. The Court approved the agreement, imposed a private reprimand, assessed costs against Respondent, and discharged the hearing officer.

DISPOSITION

approved