

INDIANA SUPREME COURT

In re Schenk

83 N.E.3d 695 (Ind. 2017) · Decided August 24, 2017

SUMMARY

The Indiana Supreme Court approved a conditional agreement disciplining an attorney who had been convicted of operating while intoxicated and possession of marijuana and failed to report the convictions to the disciplinary commission. The Court suspended the attorney for 180 days, with 30 days to be actively served and the remainder stayed subject to at least 24 months of probation with monitoring. The order also imposed conditions concerning substance use, legal and professional violations, and reporting probation violations.

CASE DETAILS

COURT	Indiana Supreme Court
JURISDICTION	Indiana
DECIDED	August 24, 2017
DISPOSITION	approved
PROCEDURAL POSTURE	The Indiana Supreme Court reviewed and approved a stipulated Statement of Circumstances and Conditional Agreement for Discipline submitted by the Indiana Supreme Court Disciplinary Commission and the respondent attorney.
PRECEDENTIAL VALUE	Published disciplinary order; precedential status not otherwise specified in the opinion text.

TOPICS

administrative law

PRACTICE AREAS

legal ethics attorney discipline professional responsibility

QUESTIONS PRESENTED

- Whether the stipulated facts established violations of Indiana Professional Conduct Rule 8.4(b) and Admission and Discipline Rule 23(11.1)(a)(2).

2. Whether the Court should approve the parties' Conditional Agreement for Discipline and impose the agreed sanction.

HOLDINGS

1. The stipulated facts established that Respondent violated Indiana Professional Conduct Rule 8.4(b) by committing criminal acts reflecting adversely on his trustworthiness or fitness as a lawyer and violated Admission and Discipline Rule 23(11.1)(a)(2) by failing to notify the Commission of his criminal convictions.
2. The Court approved the Conditional Agreement for Discipline and suspended Respondent from the practice of law for 180 days, with 30 days actively served and the remaining 150 days stayed subject to at least 24 months of probation with JLAP monitoring.

KEY QUOTATIONS

“For Respondent’s professional misconduct, the Court suspends Respondent from the practice of law for a period of 180 days, beginning October 5, 2017, with 30 days actively served and the remainder stayed subject to completion of at least 24 months of probation with JLAP monitoring;” (695)

FACTUAL BACKGROUND

In May 2011, Respondent was convicted of operating a vehicle while intoxicated with an alcohol concentration equivalent of .15 or more. In February 2016, he pleaded guilty to possession of marijuana, and he failed to report either conviction to the Disciplinary Commission. He was also arrested and charged with additional OWI-related offenses in April 2015, for which prosecution was deferred while he participated in the Allen County Alcohol Deterrent Program.

PROCEDURAL HISTORY

The Disciplinary Commission and Respondent submitted an agreed statement of facts and proposed discipline pursuant to Indiana Admission and Discipline Rule 23(12)(1)(b). The parties stipulated that Respondent had criminal convictions and had failed to report them to the Commission, and agreed that he violated Indiana Professional Conduct Rule 8.4(b) and Admission and Discipline Rule 23(11.1)(a)(2). The Supreme Court approved the agreement, imposed a 180-day suspension with 30 days actively served and the remainder stayed subject to probation, and discharged the hearing officer.

DISPOSITION

approved

OPINION

PER CURIAM.

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: In May 2011, Respondent was convicted of operating a vehicle while intoxicated ("OWI") with an alcohol concentration equivalent of .15 or more. In February 2016, Respondent pled guilty to possession of marijuana. Respondent did not report either of these convictions to the Commission.

In April 2015, Respondent was arrested for and charged with various OWI-related offenses. Respondent has been placed in the Allen County Alcohol Deterrent Program ("AADP"), and his OWI prosecution has been deferred pending his completion of the AADP program. **Violations:** The parties agree that Respondent violated Indiana Professional Conduct Rule 8.4(b), which prohibits committing a criminal act that reflects adversely on Respondent's trustworthiness or fitness as a lawyer, and Admission and Discipline Rule 23(11.1)(a)(2).

(2016), which requires an attorney found guilty of a crime to notify the Commission. **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 180 days, beginning October 5, 2017, with 30 days actively served and the remainder stayed subject to completion of at least 24 months of probation with JLAP monitoring; The Court incorporates by reference the terms and conditions of probation set forth in the parties' Conditional Agreement, which include among other things: (1) Respondent shall refrain from the use of alcohol and all mind-altering substances.

(2) Respondent shall have no violations of the law or the Rules of Professional Conduct during his probation. (3) Respondent shall promptly report to the Commission any violation of the terms of Respondent's probation.

(4) If Respondent violates the terms of his probation, the stay of his suspension may be vacated and he may be required to actively serve the suspension with or without automatic reinstatement. 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).

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

