

SUPREME COURT OF INDIANA

In the Matter of Carl J. Brizzi

962 N.E.2d 1240 (Ind. 2012) · No. 49S00-0910-DI-425 · Decided March 12, 2012

SUMMARY

The Indiana Supreme Court held that Carl J. Brizzi violated Indiana Professional Conduct Rules 3.6(a) and 3.8(f) by making prosecutorial statements that had a substantial likelihood of materially prejudicing criminal proceedings and heightening public condemnation of the accused. The Court imposed a public reprimand, while finding insufficient proof that he made the statements alleged in Count 1.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Per Curiam; All Justices
JURISDICTION	Indiana
DECIDED	March 12, 2012
DOCKET	49S00-0910-DI-425
DISPOSITION	other
PROCEDURAL POSTURE	Attorney discipline action arising from the Indiana Supreme Court Disciplinary Commission's verified complaint and the report of a hearing officer appointed by the Indiana Supreme Court.
STANDARD OF REVIEW	De novo examination of all matters presented, including the hearing officer's report and the entire record; the hearing officer's findings receive emphasis because of the officer's opportunity to observe witnesses, but the Supreme Court retains ultimate authority to determine misconduct.
PRECEDENTIAL VALUE	Published precedential opinion

TOPICS

prosecutorial misconduct

criminal procedure

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

prosecutorial misconduct

QUESTIONS PRESENTED

1. Whether the Commission proved by clear and convincing evidence that Brizzi violated Professional Conduct Rules 3.6(a) and 3.8(f) through public statements concerning pending criminal proceedings.
2. Whether the rules require proof of actual prejudice or instead prohibit statements that, when made, had a substantial likelihood of materially prejudicing an adjudicative proceeding or heightening public condemnation of the accused.
3. Whether information contained in media accounts or a probable cause affidavit falls within Rule 3.6(b)(2)'s public-record safe harbor, and what limitations govern use of that safe harbor.
4. What discipline was appropriate for Brizzi's violations.

HOLDINGS

1. The Commission failed to prove by clear and convincing evidence that Brizzi actually made the statements alleged in Count 1; therefore, Brizzi prevailed on Count 1.
2. Violations of Professional Conduct Rules 3.6(a) and 3.8(f) do not require proof that the statements actually prejudiced a defendant or proceeding; the relevant inquiry is whether, when made, the statements had a substantial likelihood of materially prejudicing the adjudicative proceeding or heightening public condemnation of the accused.
3. Statements expressing an opinion concerning a defendant's guilt or innocence, describing a suspect's character or criminal record, describing examination results or physical evidence, or announcing criminal charges without explaining the presumption of innocence are rebuttably presumed to have a substantial likelihood of materially prejudicing an adjudicative proceeding.
4. Under Rule 3.6(b)(2), the public-record safe harbor covers information contained in public government records to which an ordinary citizen has lawful access, but does not generally encompass unfiltered media accounts; a lawyer may not go beyond quotations from or references to the public record and must make clear that the information comes from the identified public document rather than expressing the lawyer's own assessment.
5. Brizzi violated Professional Conduct Rules 3.6(a) and 3.8(f) by making statements that the defendants deserved the ultimate penalty, that the evidence was overwhelming, that failing to seek the death penalty would be a travesty, and that he would not trade all the money and drugs in the world for the victims' lives.
6. A public reprimand was appropriate for Brizzi's violations.

KEY QUOTATIONS

“The rules at issue, however, do not require a finding that an otherwise improper statement cause actual prejudice to a criminal defendant or to an adjudicative proceeding.” (1245)

“In considering the propriety of a prosecutor's extra-judicial statement, the court determines the likelihood that a particular statement will cause prejudice at the time made, not whether, in hindsight, it actually worked to the detriment of a defendant.” (1245-46)

“A more expansive concept of a public record that includes the unfiltered and untested contents of all publicly accessible media would permit the public record safe harbor to swallow the general rule of restricting prejudicial speech.” (1247)

“We conclude that when these statements were made, Respondent knew or reasonably should have known that they would have a substantial likelihood of (a) materially prejudicing an adjudicative proceeding in the matter and (b) heightening public condemnation of the accused, and thus violated Professional Conduct Rules 3.6(a) and 3.8(f).” (1249)

FACTUAL BACKGROUND

Carl J. Brizzi served as the elected prosecuting attorney of Marion County, Indiana. The Commission alleged that he made prejudicial public statements concerning the prosecution of Bruce Mendenhall and, in a press release concerning the murders of seven people, stated that defendants Desmond Turner and James Stewart deserved the ultimate penalty, that the evidence was overwhelming, and that failing to seek the death penalty would be a travesty. The hearing officer found insufficient proof as to both counts, but the Supreme Court concluded that the undisputed Count 2 statements had a substantial likelihood of materially prejudicing the proceedings and heightening public condemnation of the accused.

PROCEDURAL HISTORY

The Disciplinary Commission charged Carl J. Brizzi with violating Indiana Professional Conduct Rules 3.6(a) and 3.8(f) based on public statements concerning murder prosecutions. After an evidentiary hearing, the hearing officer found that the Commission had not proven either count by clear and convincing evidence. The Indiana Supreme Court independently reviewed the record, affirmed the finding in Brizzi's favor on Count 1, rejected the hearing officer's conclusion as to Count 2, found violations of Rules 3.6(a) and 3.8(f), and imposed a public reprimand.

DISPOSITION

other

CASES CITED

- Matter of Siegel, 708 N.E.2d 869, 870 (Ind. 1999)
- Matter of Kern, 555 N.E.2d 479, 480 (Ind. 1990)
- Attorney Grievance Commission v. Gansler, 377 Md. 656, 835 A.2d 548, 567-72 (2003)
- Matter of Litz, 721 N.E.2d 258 (Ind. 1999)
- Muex v. State, 800 N.E.2d 249 (Ind. Ct. App. 2003)