

INDIANA SUPREME COURT

In re Howe

952 N.E.2d 749 (Ind. 2011) · Decided September 6, 2011

SUMMARY

The Indiana Supreme Court accepted an attorney’s consent to discipline after he admitted to three OWI convictions, including two that he failed to report to the Disciplinary Commission. The Court imposed a 180-day suspension, with 60 days to be actively served and the remainder stayed subject to at least two years of probation and specified alcohol-treatment and monitoring conditions.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Per curiam
JURISDICTION	Indiana
DECIDED	September 6, 2011
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding resolved on the respondent's affidavit of consent to discipline.
PRECEDENTIAL VALUE	Published disciplinary order

TOPICS

administrative law

PRACTICE AREAS

legal ethics attorney discipline professional responsibility

QUESTIONS PRESENTED

1. Whether Respondent engaged in professional misconduct by committing criminal acts reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer.
2. Whether Respondent violated the attorney-discipline rule requiring notification to the Disciplinary Commission of a guilty finding.
3. What discipline should be imposed in light of Respondent's admitted misconduct and consent to discipline.

HOLDINGS

1. Respondent violated Indiana Professional Conduct Rule 8.4(b) by committing criminal acts, including the 2004 and 2010 OWI offenses, that reflected adversely on his honesty, trustworthiness, or fitness as a lawyer.
2. Respondent violated Indiana Admission and Discipline Rule 23(11.1)(a)(2) by failing to notify the Disciplinary Commission of his guilty findings for the 2004 and 2010 OWI convictions.
3. A 180-day suspension from the practice of law was warranted, with 60 days actively served and the remaining 120 days stayed subject to at least two years of probation and specified treatment, abstinence, monitoring, reporting, and compliance conditions.

KEY QUOTATIONS

“Having reviewed the complaint, the affidavit, and the briefs of the parties, the Court concludes that Respondent engaged in professional misconduct and imposes discipline on Respondent.” (749)

“For Respondent’s professional misconduct, the Court suspends Respondent from the practice of law for a period of 180 days, beginning October, 18, 2011, with 60 days actively served and the remainder stayed subject to completion of at least two years of probation” (750)

FACTUAL BACKGROUND

Respondent had a 1985 OWI conviction and later pleaded guilty to OWI in 2004 and 2010. The 2004 and 2010 offenses involved reported blood-alcohol concentrations of 0.31% and 0.19%, respectively, and Respondent failed to notify the Disciplinary Commission of either conviction. Respondent admitted the charged misconduct and reported participating in substance-abuse treatment and related monitoring programs.

PROCEDURAL HISTORY

The Indiana Supreme Court Disciplinary Commission filed a verified complaint charging Respondent with professional misconduct arising from multiple OWI convictions and failures to report guilty findings. Respondent admitted the charged misconduct and tendered an affidavit consenting to discipline. The Indiana Supreme Court accepted the consent and imposed a stayed-and-active suspension with probationary conditions.

DISPOSITION

other

OPINION

PER CURIAM.

PUBLISHED ORDER ACCEPTING CONSENT TO DISCIPLINE AND IMPOSING DISCIPLINE The Indiana Supreme Court Disciplinary Commission filed a “Verified Complaint for Disciplinary Action” against Respondent. Respondent has tendered to this Court an affidavit of consent to discipline, pursuant to Indiana Admission and Discipline Rule 23(17), acknowledging

that the material facts alleged in the complaint are true and consenting to discipline to be determined by this Court.

Having reviewed the complaint, the affidavit, and the briefs of the parties, the Court concludes that Respondent engaged in professional misconduct and imposes discipline on Respondent. Facts: The Commission filed a Verified Complaint on March 21, 2011, making the following allegations: Count 1.

On May 16, 1985, Respondent was convicted of operating a vehicle while intoxicated (“OWI”). Count 2. Based on an incident on October 7, 2004, Respondent pled guilty to OWI, a class A misdemeanor. A test indicated his B.A.C. to be 0.31%. He failed to report this conviction to the Commission. Count 3. Based on an incident on February 12, 2010, which involved a traffic accident, Respondent pled guilty to OWI, a class A misdemeanor.

A test indicated his B.A.C. to be 0.19%. He failed to report this conviction to the Commission. Respondent submitted an “Affidavit of Consent to Discipline” on May 19, 2011, admitting to the charged misconduct. He reports that he has taken steps to address his alcohol abuse, including participation in a Court Substance Abuse Program, an Ignition Interlock Program, and out-patient treatment through the Veteran’s Administration.

Respondent suggests a period of suspension, stayed pending probation under terms including continued treatment for alcohol abuse, monitoring by the Indiana Judges and Lawyers Assistance Program, and any other terms the Commission deems appropriate. Violations: Respondent admits that he violated these rules prohibiting the following misconduct: Ind. Professional Conduct Rule 8.4(b): Committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer.

Ind. Admission and Discipline Rule 23(l.l.1)(a)(2): Failure to notify the Commission of a guilty finding. Discipline: For Respondent’s professional misconduct, the Court suspends Respondent from the practice of law for a period of 180 days, beginning October, 18, 2011, with 60 days actively served and the remainder stayed subject to completion of at least two years of probation, the terms of which shall be: (1) Respondent shall continue any outpatient program approved by the Commission.

(2) Respondent shall abstain from the use of alcohol. (3) Respondent shall enter into a monitoring agreement with the Judges and Lawyers Assistance Program and shall have no violations of the monitoring agreement, the law, or the Rules of Professional Conduct during his probation.

(4) Respondent shall promptly report any violations of the terms of his probation to the Commission. (5) Respondent shall comply with any other terms of probation that the Commission deems appropriate. (6) If Respondent violates his probation, the balance of the stayed suspension

shall be actively served without automatic reinstatement, and Respondent may be reinstated only through the procedures of Admission and Discipline Rule 23(4) and (18).

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). Respondent's probation shall remain in effect until it is terminated pursuant to Admission and Discipline Rule 23(17.1).

The costs of this proceeding are assessed against Respondent. The Clerk is directed to forward a copy of this Order to the parties or their respective attorneys and to all other entities entitled to notice under Admission and Discipline Rule 23(3)(d).

The Clerk is further directed to post this order to the Court's website, and Thomson Reuters is directed to publish a copy of this order in the bound volumes of this Court's decisions. All Justices concur.