

INDIANA SUPREME COURT

In re Darby

801 N.E.2d 627 (Ind. 2004) · Decided January 14, 2004

SUMMARY

The Indiana Supreme Court imposed reciprocal discipline on Richard D. Darby, Jr., based on his disbarment by the Illinois Supreme Court for misconduct including client neglect, dishonesty, tax-related misconduct, and false bankruptcy filings. The court suspended Darby from practicing law in Indiana and made reinstatement contingent on his reinstatement in Illinois or further order of the court.

CASE DETAILS

COURT	Indiana Supreme Court
JURISDICTION	Indiana
DECIDED	January 14, 2004
DISPOSITION	other
PROCEDURAL POSTURE	Reciprocal attorney-discipline proceeding initiated by the Indiana Supreme Court Disciplinary Commission after the respondent was disbarred in Illinois.
STANDARD OF REVIEW	Under Indiana Admission and Discipline Rule 23(28)(c), foreign discipline is imposed identically unless the lawyer or disciplinary authority demonstrates a specified due-process, proof, sanction, or injustice exception; the burden rests on the party seeking different discipline.
PRECEDENTIAL VALUE	Published Indiana Supreme Court disciplinary order

TOPICS

- appellate procedure
- administrative law

PRACTICE AREAS

- attorney discipline
- reciprocal discipline
- professional responsibility
- appellate procedure
- administrative law

QUESTIONS PRESENTED

1. Whether Indiana should impose reciprocal discipline after Illinois disbarred the respondent for professional misconduct.
2. Whether the respondent demonstrated any basis under Indiana Admission and Discipline Rule 23(28)(c) for imposing discipline different from the Illinois discipline.

HOLDINGS

1. Indiana must impose discipline identical to that imposed by the other jurisdiction when the Rule 23(28)(c) exceptions are not established; the respondent was therefore suspended from practicing law in Indiana and made ineligible to seek reinstatement until reinstated in Illinois or further order of the Indiana Supreme Court.
2. The final Illinois adjudication conclusively established the respondent's misconduct for purposes of the Indiana reciprocal-discipline proceeding.

KEY QUOTATIONS

“Upon the expiration of thirty (30) days from service of the order [order to show cause] set out in subsection (b), this Court shall impose discipline identical to that ordered in the other jurisdiction unless the Executive Secretary or the lawyer demonstrate, or this Court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:” (801 N.E.2d at 628)

“The burden is on the party seeking different discipline in this state to demonstrate that the imposition of the same discipline is unwarranted.” (801 N.E.2d at 628)

FACTUAL BACKGROUND

Richard D. Darby, Jr. was admitted to practice in Indiana in 1972 and Illinois in 1986. Illinois disciplinary proceedings found that he neglected a client's case, misled the client, failed to file a state tax return, and filed false or misleading pleadings and gave false testimony in his personal bankruptcy. The Illinois Supreme Court disbarred him, and he did not meaningfully participate in the Illinois proceeding or respond to Indiana's order to show cause.

PROCEDURAL HISTORY

The Indiana Supreme Court Disciplinary Commission filed a verified notice of foreign discipline and petition for an order to show cause. After the court issued an order to show cause, the respondent did not respond. The court imposed reciprocal discipline based on the Illinois disbarment and the respondent's failure to demonstrate grounds for different discipline.

DISPOSITION

other

CASES CITED

- In re Richard D. Darby, Jr., No. 98 CH 628

OPINION

In re Darby 801 N.E.2d 627

PER CURIAM.

ORDER IMPOSING IDENTICAL RECIPROCAL DISCIPLINE

The Indiana Supreme Court Disciplinary Commission filed its Verified Notice of Foreign Discipline and Petition for Issuance of an Order to Show Cause on September 19, 2003, advising that the respondent, Richard D. Darby, Jr., was disciplined by the Supreme Court of Illinois and requesting, pursuant to Ind. Admission and Discipline Rule 23(28), that identical reciprocal discipline be imposed in this state. On October 10, 2008, this Court issued an Order to Show Cause, to which the respondent has not responded. This case is now before us for final resolution. We now find that the respondent was admitted to practice law in Indiana in 1972 and Illinois in 1986. The respondent faced five counts of misconduct in the State of Illinois. On October 19, 1994, the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission issued its report and recommendation, finding that the respondent had neglected a client's case and engaged in conduct that was deceitful, fraudulent and dishonest. The respondent's misconduct included neglecting a client's case and misleading the client about handling the case, failure to file a state tax return, and filing false and misleading pleadings and giving false testimony in his personal bankruptcy. The Board also found that the respondent failed meaningfully to participate in the disciplinary proceeding brought against him. The Board recommended that the respondent be disbarred. On January 30, 1995, the Illinois Supreme Court ordered that the respondent be disbarred. In re Richard D. Darby, Jr., No. 98 CH 628. Pursuant to Illinois rule, an order of disbarment precludes a lawyer from seeking reinstatement for 5 years. Illinois Supreme Court Rule 767. We find further that, pursuant to Ad-mis.Disc.R. 23(28)(c),¹ the respondent has *628 failed to demonstrate why identical reciprocal discipline should not issue in this state. IT IS, THEREFORE, ORDERED that the respondent, Richard D. Darby, Jr., is hereby suspended from the practice of law in this state. The respondent shall not be eligible to petition for reinstatement in this state pursuant to Admis.Disc.R. 23(4) until reinstated to the practice of law in Illinois or upon further order of this Court. The Clerk of this Court is directed to forward notice of this Order to the respondent or his attorney, to the Indiana Supreme Court Disciplinary Commission, to the clerk of the United States Court of Appeals for the Seventh Circuit, to the clerk of each of the United States District Courts in this state, to the clerks of the United States Bankruptcy Courts in this state, to the Supreme Court of Illinois, and to all other entities pursuant to Ad-mis.Disc.R. 23(8)(d), governing suspension. All Justices concur. . Ind. Admission Rule 23(28)(c) provides: and Discipline (c) Upon the expiration of thirty (30) days from service of the order [order to show cause] set out in subsection (b), this Court shall impose discipline identical to that ordered in the other jurisdiction unless the Executive Secretary or the lawyer demonstrate, or this Court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation

of due process;

(2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could *628not, consistent with its duty, accept as final the conclusion on that subject;

(3) The imposition of the same discipline by the Court would be inconsistent with standards governing sanctions in this rule or would result in grave injustice; or

(4) The misconduct established warrants substantially different discipline in this state.

If this Court determines that any of those elements exists, this Court shall enter such other order of discipline as it deems appropriate. The burden is on the party seeking different discipline in this state to demonstrate that the imposition of the same discipline is unwarranted. (d) In all other aspects, a final adjudication in another jurisdiction that a lawyer has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this state.