

INDIANA SUPREME COURT

In re Yudkin

61 N.E.3d 1169 (Ind. 2016) · Decided October 25, 2016

SUMMARY

The Indiana Supreme Court found that Respondent engaged in professional misconduct by knowingly misrepresenting the filing date of a motion to correct error, asserting a frivolous defamation claim, and inaccurately quoting a procedural rule during the disciplinary investigation. The Court held that this conduct violated Indiana Professional Conduct Rules 3.1, 3.3(a)(1), and 8.4(c). It suspended Respondent for at least 90 days without automatic reinstatement and assessed the costs of the proceeding against Respondent.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Loretta H. Rush, Chief Justice
JURISDICTION	Indiana
DECIDED	October 25, 2016
DISPOSITION	other
PROCEDURAL POSTURE	The Indiana Supreme Court reviewed a hearing officer's report concerning the Indiana Supreme Court Disciplinary Commission's verified complaint for disciplinary action against Respondent.
PRECEDENTIAL VALUE	Published precedential Indiana Supreme Court disciplinary opinion

TOPICS

- appellate procedure
- civil procedure
- commercial litigation

PRACTICE AREAS

- legal ethics
- attorney discipline
- professional responsibility
- appellate practice
- civil litigation

QUESTIONS PRESENTED

- Whether Respondent violated Indiana Professional Conduct Rules 3.1, 3.3(a)(1), and 8.4(c) through frivolous litigation, knowing misrepresentations to tribunals, and dishonest or deceitful conduct.
- What discipline should be imposed for Respondent's professional misconduct.

HOLDINGS

1. Respondent violated Rule 3.1 by asserting a defamation claim for which there was no non-frivolous basis in law or fact.
2. Respondent violated Rule 3.3(a)(1) by knowingly making false statements of fact or law to the trial and appellate courts and failing to correct prior false statements.
3. Respondent violated Rule 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.
4. Respondent was suspended from the practice of law in Indiana for not less than ninety days without automatic reinstatement, subject to the specified reinstatement requirements.

KEY QUOTATIONS

“the Court finds that Respondent engaged in professional misconduct and imposes discipline on Respondent.” (1169)

“Reinstatement is discretionary and requires clear and convincing evidence of the attorney’s remorse, rehabilitation, and fitness to practice law.” (1170)

FACTUAL BACKGROUND

Respondent represented a bank in a collection action against a pro se defendant, who timely filed a motion to correct error on April 29, 2013. Respondent repeatedly represented to the trial court and Court of Appeals that the motion had been filed on May 2 and was untimely, despite later knowing the April 29 filing date was correct; the Court of Appeals ultimately granted rehearing, reversed, and held the bank's action time-barred. After the defendant retained counsel to evaluate a potential claim against Respondent, Respondent filed a federal defamation action against the defendant and counsel despite conceding that the claim had no factual or legal basis. Respondent also selectively quoted Trial Rule 59(C) during the disciplinary investigation in a way that inaccurately suggested the motion would have been untimely under either filing date.

PROCEDURAL HISTORY

A hearing officer appointed by the Indiana Supreme Court heard evidence on the Disciplinary Commission's verified complaint and issued a report. After reviewing the report and the parties' briefs, the Indiana Supreme Court found professional misconduct, imposed a suspension of at least ninety days without automatic reinstatement, assessed costs, and discharged the hearing officer.

DISPOSITION

other

OPINION

In re Yudkin 61 N.E.3d 1169

RUSH, J.

LORETTA H. RUSH, Chief Justice. Upon review of the report of the hearing officer, the Honorable Lloyd H. Milliken, Jr., who was appointed by this Court to hear evidence on the Indiana Supreme Court Disciplinary Commission's "Verified Complaint for Disciplinary Action," and the briefs of the parties, the Court finds that Respondent engaged in professional misconduct and imposes discipline on Respondent. Facts: Respondent represented "Bank" in a collection action against a pro se defendant ("AB"). After a bench trial, the trial court entered an approximately \$25,000 judgment in favor of Bank. AB timely filed a motion to correct error ("MTCE") on April 29, 2013, which was noted on the chronological case summary on May 2, 2013. Thereafter ensued a series of pleadings by Respondent, in the trial court and later on appeal, in which Respondent erroneously indicated the MTCE was filed on May 2 and as a result was untimely. The hearing officer credited Respondent's assertion that his first misstatement was not deliberately made, but Respondent admits his subsequent misstatements to the trial court and Court of Appeals were made despite his actual knowledge' the MTCE was filed on April 29. The trial court erroneously denied AB's MTCE as untimely, and when AB appealed the Court of Appeals granted Bank's motion to dismiss AB's appeal as untimely,' a motion in which Respondent knowingly-misrepresented that the MTCE had been filed on May 2. AB petitioned for rehearing, again pointing out (as he had done in the trial court and at earlier stages of the appeal) that he had timely filed the MTCE on April 29. The Court of Appeals granted AB's petition and, after further briefing by the parties, issued a decision reversing the trial court and holding Bank's action against AB was time-barred. AB then retained an attorney ("CD") to evaluate a potential claim against Respondent based on his misleading assertions in the collection action and appeal. In subsequent communications between Respondent and CD, Respondent demanded a retraction of the allegation that he had misled the trial and appellate courts regarding the filing date of the MTCE. When CD would not issue a retraction, Respondent filed a federal lawsuit against AB and CD, alleging defamation among other things. As subsequently amended, the complaint sought over \$500,000. AB and CD filed motions to dismiss, which the district court granted. Respondent concedes he had no basis in fact or law for his defamation claim. In a written response to the Commission during its investigation of these events, Respondent selectively quoted the language of Trial Rule 59(C) in a manner that inaccurately suggested AB's MTCE would have been untimely regardless of whether it had been filed on April 29 or May 2. Violations: The Court finds that Respondent violated these Indiana Professional Conduct Rules prohibiting the following misconduct: 3.1: Asserting a position for which there is no non-frivolous basis in law or fact. 3.3(a)(1): Knowingly making a false statement of fact or law to a tribunal or failing to correct *1170a false statement of material fact or law previously made to the tribunal by the lawyer. 8.4(c): Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Discipline: For Respondent's professional misconduct, the Court suspends Respondent from the practice of law in this state for a period of not less than 90 days, without automatic reinstatement, beginning December 8, 2016. Respondent shall not undertake any new legal matters between sex-vice 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). At the conclusion of the minimum period of suspension, Respondent may , petition this Court for reinstatement to the practice of law in this state, provided Respondent pays the costs of this proceeding, fulfills the duties of a suspended attorney, and satisfies the requirements for reinstatement of Admission and Discipline Rule 23(4) and (18). Reinstatement is discretionary and requires clear and convincing evidence of the attorney's remorse, i-e habilitation, and fitness to practice law. See Admis. Disc. R. 23(4)(b). The costs of this proceeding are assessed against Respondent. The hearing officer appointed in this case is discharged. All Justices concur.