

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