

INDIANA SUPREME COURT

In re McConnell

11 N.E.3d 902 (Ind. 2014) · Decided June 26, 2014

SUMMARY

The Indiana Supreme Court approved a conditional agreement disciplining an attorney who had multiple operating-while-intoxicated convictions, failed to report one conviction, and violated criminal probation. The Court imposed a 180-day suspension, stayed subject to at least two years of probation with monitoring by the Indiana Judges and Lawyers Assistance Program.

CASE DETAILS

COURT	Indiana Supreme Court
JURISDICTION	Indiana
DECIDED	June 26, 2014
DISPOSITION	approved
PROCEDURAL POSTURE	The Indiana Supreme Court reviewed and approved a conditional agreement for discipline submitted by the Indiana Supreme Court Disciplinary Commission and the respondent attorney.
PRECEDENTIAL VALUE	Published disciplinary order

TOPICS

probation criminal procedure

PRACTICE AREAS

legal ethics and professional responsibility attorney discipline professional misconduct

QUESTIONS PRESENTED

- Whether respondent committed professional misconduct by committing criminal acts reflecting adversely on his trustworthiness or fitness as a lawyer.
- Whether respondent violated the duty to notify the Disciplinary Commission of a guilty finding and to transmit a certified copy of the finding within ten days.
- Whether the stipulated discipline should be approved.

HOLDINGS

1. Respondent violated Indiana Professional Conduct Rule 8.4(b) by committing criminal acts that reflected adversely on his trustworthiness or fitness as a lawyer.
2. Respondent violated Indiana Admission and Discipline Rule 23(11.1)(a)(2) by failing to notify the Commission of a guilty finding and failing to transmit a certified copy of the guilty finding within ten days.
3. The court approved a 180-day suspension from the practice of law, stayed in full subject to at least two years of probation with monitoring by the Indiana Judges and Lawyers Assistance Program.

KEY QUOTATIONS

“For Respondent’s professional misconduct, the Court suspends Respondent from the practice of law for a period of 180 days, beginning on the date of this order, all stayed subject to completion of at least two years of probation with monitoring by the Indiana Judges and Lawyers Assistance Program (“JLAP”).” (902)

“If Respondent violates his probation, the stayed suspension shall be actively served without automatic reinstatement.” (903)

FACTUAL BACKGROUND

Respondent was convicted of operating a motor vehicle while intoxicated in 2007 but did not report the conviction to the Disciplinary Commission. In 2012, he was convicted of operating while intoxicated with an alcohol concentration equivalence of .15 or more and received a sentence that included jail, home monitoring, and probation. He violated probation by consuming alcohol, resulting in a 2014 guilty plea to public intoxication. The parties identified respondent's lack of disciplinary history, cooperation, alcohol treatment, and other consequences as mitigating factors.

PROCEDURAL HISTORY

The Disciplinary Commission and respondent stipulated to facts, rule violations, aggravating and mitigating circumstances, and proposed discipline under Indiana Admission and Discipline Rule 23(11). The court approved the agreement, suspended respondent from practicing law for 180 days, stayed the suspension subject to at least two years of probation with monitoring, and assessed proceeding costs against respondent.

DISPOSITION

approved

OPINION

PER CURIAM.

PUBLISHED ORDER APPROVING STATEMENT OF CIRCUMSTANCES AND CONDITIONAL AGREEMENT FOR DISCIPLINE Pursuant to Indiana Admission and Discipline Rule 23(11), the Indiana Supreme Court Disciplinary Commission and Respondent have submitted for approval a “Statement of Circumstances and Conditional Agreement for

Discipline” stipulating agreed facts and proposed discipline as summarized below: Stipulated Facts: On March 17, 2007, Respondent was convicted of operating a motor vehicle while intoxicated (“OWI”), a class C misdemeanor.

He did not report this conviction to the Commission. On November 21, 2012, Respondent was convicted of OWI with an alcohol concentrate equivalence of .15 or more, a class A misdemeanor. He received a sentence of 365 days, with 245 suspended, 10 served in jail, and the remainder served with home monitoring. He was subject to probation during the suspended portion of his sentence.

Aggravating and mitigating facts. The parties cite the following fact in aggravation: Respondent violated his criminal probation by consuming alcohol on March 17, 2013, which resulted in his guilty plea to public intoxication, a class B misdemeanor on February 6, 2014.

The parties cite the following facts in mitigation: (1) Respondent has no disciplinary history; (2) Respondent was cooperative with the Commission; (3) Respondent voluntarily engaged in and completed alcohol treatment, including a relapse prevention program; and (4) Respondent has already suffered other consequences from his misconduct, including criminal penalties and fines and termination of his employment and partnership at a law firm.

Violations: The parties agree that Respondent violated these rules that prohibit the following misconduct: Ind. Professional Conduct Rule 8.4(b): Committing a criminal act that reflects adversely on the lawyer’s trustworthiness or fitness as a lawyer. Ind. Admission and Discipline Rule 23(11.1)(a)(2): Failure to notify the Commission of a guilty finding, and failure to transmit a certified copy of a guilty finding to the Commission within ten days of the finding.

Discipline: The Court, having considered the submission of the parties, now approves the following agreed discipline. For Respondent’s professional misconduct, the Court suspends Respondent from the practice of law for a period of 180 days, beginning on the date of this order, all stayed subject to completion of at least two years of probation with monitoring by the Indiana Judges and Lawyers Assistance Program (“JLAP”).

The Court incorporates by reference the terms and conditions of probation set forth in the parties’ Conditional Agreement, which include: (1) During his probation, Respondent shall refrain totally from the use of alcohol and mind-altering substances except as prescribed.

(2) Respondent shall have no violations of his JLAP monitoring agreement or the Rules of Professional Conduct during his probation. (3) Respondent shall report immediately to the Commission any violation of his probation. *903(4) If Respondent violates his probation, the stayed suspension shall be actively served without automatic reinstatement. Notwithstanding the expiration of the minimum term of probation set forth above, Respondent’s probation shall remain

in effect until it is terminated pursuant to a petition to terminate probation filed under Admission and Discipline Rule 23(17.1).

The costs of this proceeding are assessed against Respondent. With the acceptance of this agreement, the hearing officer appointed in this case is discharged. The Clerk is directed to forward a copy of this Order to the hearing officer, 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.