

SUPREME COURT OF INDIANA

In the Matter of David J. Magley

854 N.E.2d 349 (Ind. 2006) · No. 85S00-0510-DI-494 · Decided September 27, 2006

SUMMARY

The Supreme Court of Indiana found that David J. Magley committed attorney misconduct by engaging in criminal conduct, engaging in conduct prejudicial to the administration of justice, and failing to notify the Disciplinary Commission of a conviction. The court suspended him from practicing law for at least six months, subject to reinstatement requirements, and assessed costs against him.

CASE DETAILS

COURT	Supreme Court of Indiana
JURISDICTION	Indiana
DECIDED	September 27, 2006
DOCKET	85S00-0510-DI-494
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding based on the Indiana Disciplinary Commission's verified complaint and the hearing officer's report. The respondent failed to appear or answer, and the Commission sought judgment on the complaint.
STANDARD OF REVIEW	Review of the hearing officer's report and the record in an attorney disciplinary proceeding.
PRECEDENTIAL VALUE	Published attorney disciplinary order

TOPICS

remedies

PRACTICE AREAS

legal ethics attorney discipline professional responsibility

QUESTIONS PRESENTED

1. Whether the respondent's criminal conduct violated Indiana Professional Conduct Rules 8.4(b) and 8.4(d).

2. Whether the respondent violated Indiana Admission and Discipline Rule 23, section 11.1(a)(2), by failing to notify the Disciplinary Commission of his criminal conviction.
3. What discipline should be imposed for the misconduct.

HOLDINGS

1. The respondent's conduct violated Indiana Professional Conduct Rule 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness, and Rule 8.4(d), prohibiting conduct prejudicial to the administration of justice.
2. The respondent violated Indiana Admission and Discipline Rule 23, section 11.1(a)(2), by failing to notify the Disciplinary Commission of his 2001 criminal conviction.
3. The respondent was suspended from the practice of law for not less than six months, effective November 13, 2006, and required to remain suspended until satisfying the court that he met all reinstatement requirements and was fit to resume practice.

KEY QUOTATIONS

“Upon review of the report of the hearing officer appointed by this Court to hear evidence on the Disciplinary Commission's Verified Complaint for Disciplinary Action, we find that the respondent engaged in attorney misconduct.” (854 N.E.2d at 349)

“For the misconduct found herein, this Court suspends respondent from the practice of law, effective November 13, 2006, for a period of not less than six (6) months, after which respondent may petition this Court for reinstatement pursuant to Ind. Admission and Discipline Rule 23 § 4.” (854 N.E.2d at 350)

FACTUAL BACKGROUND

David J. Magley, then Chief Deputy Prosecutor for Wabash County, pleaded guilty in 2001 to reckless driving after several operating-while-intoxicated and reckless-driving charges were filed against him. He failed to notify the Indiana Supreme Court Disciplinary Commission of that conviction. In 2005, he was charged again with operating a vehicle while intoxicated and operating with a blood alcohol content of at least .15 percent, and he pleaded guilty to the latter offense. He did not appear or answer the resulting disciplinary complaint.

PROCEDURAL HISTORY

The Indiana Supreme Court appointed a hearing officer to receive evidence concerning the Commission's disciplinary complaint. The respondent neither appeared nor filed an answer. After the Commission applied for judgment on the complaint, the court reviewed the hearing officer's report, found attorney misconduct, and imposed a suspension.

DISPOSITION

other

OPINION

PER CURIAM.

854 N.E.2d 349 (2006) In the Matter of David J. MAGLEY. No. 85S00-0510-DI-494. Supreme Court of Indiana. September 27, 2006. ORDER FINDING MISCONDUCT AND IMPOSING DISCIPLINE Upon review of the report of the hearing officer appointed by this Court to hear evidence on the Disciplinary Commission's Verified Complaint for Disciplinary Action, we find that the respondent engaged in attorney misconduct.

Facts: On May 11, 2001, respondent, then the Chief Deputy Prosecutor for Wabash County, was charged with Operating a Vehicle While Intoxicated, Operating a Vehicle with a Blood Alcohol Content of .10% or Greater, Operating a Vehicle with at Least .15% Blood Alcohol Content, and two counts of Reckless Driving.

On December 12, 2001, respondent pled guilty to one count of Reckless Driving, a Class B Misdemeanor. All other charges were dismissed. Respondent did not notify the Commission of his conviction. On July 27, 2005, while still employed as Chief Deputy Prosecutor, respondent was charged with Operating a Vehicle While Intoxicated and Operating a Vehicle with at Least .15% Blood Alcohol Content.

On October 13, 2005, respondent pled guilty to Operating a Vehicle with at Least .15% Blood Alcohol Content, a Class A Misdemeanor. The Commission filed its verified complaint on October 25, 2005. The respondent neither appeared nor filed an answer.

On May 26, 2006, the Commission applied for a judgment on the complaint. Violations: Respondent's conduct constitutes violations of Ind. Professional Conduct Rule 8.4(b), which prohibits a lawyer from committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; Prof. Cond. R. 8.4(d), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice; and Ind. Admission and Discipline Rule 23 § 11.1(a)(2), which requires a lawyer to notify the Commission of a criminal conviction. *350 For the misconduct found herein, this Court suspends respondent from the practice of law, effective November 13, 2006, for a period of not less than six (6) months, after which respondent may petition this Court for reinstatement pursuant to Ind. Admission and Discipline Rule 23 § 4.

However, respondent shall remain suspended until such time as he successfully demonstrates to the satisfaction of this Court that he meets all of the reinstatement requirements, including that he can be safely recommended to the public as a person fit to resume the practice of law. Costs of this proceeding are assessed against the respondent.

The Clerk of this Court is directed to forward notice of this order to the respondent and his attorney; to the Indiana Supreme Court Disciplinary Commission, to the hearing officer, and to all

other entities as provided in Admis.Disc.R. 23(3)(d), and to post this Order on the Court's website for orders concerning final resolution of attorney disciplinary cases.

All Justices concur.