

SUPREME COURT OF INDIANA

In the Matter of: Allen R. Stout, Respondent

Supreme Court Case No. 20S-DI-719

February 3, 2022, Filed

February 3, 2022, Decided

Loretta H. Rush, Chief Justice of Indiana. All Justices concur.

Loretta H. Rush

Published Order Finding Misconduct and Imposing Discipline

Upon review of the report of the hearing officer, the Honorable Christopher L. Burnham, who was appointed by this Court to hear evidence on the Indiana Supreme Court Disciplinary Commission's "Disciplinary Complaint," and the briefs of the parties, the Court finds that Respondent engaged in professional misconduct and imposes discipline on Respondent.

Facts: Count 1 of the disciplinary complaint charged Respondent with violations of *Indiana Professional Conduct Rules 4.4(a)* and *8.4(d)* and Indiana Admission and Discipline Rule 22 (Oath of Attorneys) in connection with Respondent's representation of the wife in a marital dissolution case. In sum, the complaint alleged that Respondent behaved inappropriately toward the husband during a deposition and following a hearing. The hearing officer found Respondent's conduct, while unprofessional, did not rise to the level of rule violations as alleged. The Commission seeks review of those findings.

Count 2 of the complaint charged Respondent with violations of *Professional Conduct Rules 4.1(a)*, *4.4(a)*, *8.4(b)*, *8.4(c)*, and *8.4(d)*, in connection with Respondent's representation of a man against whom a woman had petitioned for a protective order. During a deposition of the unrepresented petitioner that was attended by a court reporter and others in Respondent's firm, Respondent confronted the petitioner with several 8"x10" color copies of intimate photos she had sent the man during their relationship, prior to the events giving rise to the protective order petition, displaying them facing up on the table for all in attendance to see. Respondent asked the petitioner, "why do women who seek the aid of the court send these kinds of pictures to men?"

Respondent then asked her if she still intended to pursue a protective order or whether there would be a "better way" to handle things than for her to be "drug through" and "exposed in" the court. When the petitioner responded she just wanted the man to stop harassing her, Respondent ended the deposition and told the petitioner "[t]he court reporter will transcribe this to final form, submit it to the court, it then becomes a public record. There's a way to stop that, but otherwise with the matter still pending we'll have to submit it to the court and attend a hearing, which will be a very public hearing as well." The petitioner then indicated she wanted to dismiss the case, Respondent instructed the court reporter to go off the record, and Respondent instructed the petitioner how to file for dismissal, which she did immediately after leaving the deposition. Respondent later bragged to an associate about having secured a dismissal by threatening to have the photographs become part of the record.

The hearing officer found in Respondent's favor with respect to *Rules 4.4(a)* and *8.4(b)*, but found Respondent's [*2] conduct did violate the following rules:

- 4.1(a): Knowingly making a false statement of material fact or law to a third person in the course of representing a client.
- 8.4(c): Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- 8.4(d): Engaging in conduct prejudicial to the administration of justice.

Respondent seeks review of the findings adverse to him, and the Commission seeks review of the findings in Respondent's favor.

Violations: The Commission carries the burden of proof to demonstrate attorney misconduct by clear and convincing evidence. Admis. Disc. R. 23(14)(g). And while the review process in disciplinary cases involves a *de novo* examination of all matters presented to the Court, a hearing officer's findings nevertheless receive emphasis due to the unique opportunity for direct observation of witnesses. *See Matter of Gabriel*, [120 N.E.3d 189](#), [190](#) (Ind. 2019).

We have considered the parties' extensive arguments regarding each of the charged violations in this case. Upon careful review of the record before us, we find sufficient support for the hearing officer's material findings and his ultimate conclusions. Accordingly, we find Respondent violated *Professional Conduct Rules 4.1(a)*, *8.4(c)*, and *8.4(d)* with respect to Count 2, and we find in favor of Respondent on all remaining charges.

Discipline: Respondent urges us to impose a public reprimand for any misconduct found, principally relying upon *Matter of Broderick*, [929 N.E.2d 199](#) (Ind. 2010). Both cases broadly involve the same type of misconduct, but Respondent's actions were qualitatively worse by several degrees. In *Broderick*, the attorney's false statement in a prosecution deferral agreement, which mischaracterized a defendant's criminal history, was the product of willful ignorance. Respondent's deception, on the other hand, was part of an intentional and purposeful plan he devised to coerce and bully the petitioner into dismissing her case under threat of having her intimate photos exposed. We agree with the hearing officer that a 90-day suspension is warranted, and we further conclude that the entire suspension should be actively served.

For Respondent's professional misconduct, the Court *suspends Respondent from the practice of law for a period of 90 days, beginning March 11, 2022*. Respondent shall not undertake any new legal matters between service 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 period of suspension, provided there are no other suspensions then in effect, Respondent shall be automatically reinstated to the practice of law, subject to the conditions of Admission and Discipline Rule 23(18)(a).

The costs of this proceeding are assessed against Respondent. The hearing officer appointed in this case is discharged with the Court's appreciation.

Done at Indianapolis, Indiana, on 2/3/2022.

/s/ Loretta H. Rush

Loretta H. Rush

Chief Justice of Indiana

All Justices concur.