Filed: 12/14/2016 2:56:41 PM

IN THE SUPREME COURT

OF THE

STATE OF INDIANA

IN THE MATTER OF:	)	
	)	
BRADLEY D. COOPER	)	CAUSE NO. 41S00-1509-DI-520
Attorney No. 17274-06	)	

HEARING OFFICER'S PRELIMINARY PROCEEDINGS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW, AS PROPOSED AND SUBMITTED BY COUNSEL FOR THE DISCIPLINARY COMMISSION

The Honorable Charles K. Todd, Jr., Judge, Wayne County Superior Court #1, the Hearing Officer appointed herein by the Indiana Supreme Court, submits to the Court his Hearing Officer's Report in the form of Preliminary Proceedings, Findings of Fact, Conclusions of Law, and Recommended Sanction as follows:

I.
PRELIMINARY PROCEEDINGS

1. The Indiana Supreme Court Disciplinary Commission ("Commission") filed its Verified Complaint for Disciplinary Action against Bradley D. Cooper ("respondent") on September 2, 2015.
2. On or about October 20, 2015, attorneys James H. Voyles and Jennifer M. Lukemeyer entered their Appearance on behalf of respondent.
3. On October 29, 2015, respondent filed his Answers to Verified Complaint for Disciplinary Action ("Answer").

4. Following respondent's filing of a Petition for a Change of Hearing Officer, the Indiana Supreme Court, in its April 13, 2016 Order Appointing Replacement Hearing Officer, ordered the undersigned appointed as Hearing Officer for respondent's discipline case.

5. The undersigned accepted appointment as Hearing Officer in this matter on April 15, 2016.

6. The final hearing in this matter took place on October 5, 2016. At the final hearing, the parties' Joint Stipulations ("stipulations"), respondent's testimony, and respondent's Exhibits A through S were entered into evidence. Respondent also called eight character witnesses to testify on his behalf. Thereafter, the parties filed their Proposed Preliminary Proceedings, Findings of Fact and Conclusions of Law by December 14, 2016. These were reviewed and were considered by the Hearing Officer in preparing this Report.

II.
FINDINGS OF FACT

7. The Indiana Supreme Court has jurisdiction over attorney Bradley D. Cooper ("respondent") by virtue of his admission to the bar of this Court on October 22, 1993. (Stipulations, ¶ 1.)

8. At all times relevant to this matter, respondent practiced law in Johnson County, Indiana. (Stipulations, ¶ 2.)

9. On or about November 10, 1997, Michael Dean Overstreet ("Overstreet") was charged with the murder of Kelly Eckart ("Eckart"), a Franklin College Student. (Stipulations, ¶ 3.)

10. On or about March 24, 2000, the State of Indiana filed a Motion to Dismiss a charge of Criminal Deviate Conduct, a class A felony, that had been filed against Overstreet as one of the charges filed in Eckart's murder. The trial court granted the State's motion.

Overstreet was, then, charged as follows: Count I: Murder, a felony; Count II: Felony Murder, a felony; Count III: Rape; a class A felony; and Count IV: Confinement, a class A felony. (Stipulations, ¶ 4.)

11. On or about April 11, 2000, the State filed against Overstreet its 2nd Amended Death Penalty Information. (Stipulations, ¶ 5.)

12. On or about May 13, 2000, a jury found Overstreet guilty of Count I: Murder, a felony; Count II: Felony Murder, a felony; Count III, Rape, a Class B felony; and Count IV: Confinement, a class B felony (as a lesser included offense). (Stipulations, ¶ 6.)

13. On May 18, 2000, the jury returned its recommendation that the death penalty be imposed on Overstreet. The trial court set the matter for a sentencing hearing on June 20, 2000. (Stipulations, ¶ 7.)

14. On or about June 20, 2000, the trial court heard evidence during Overstreet's sentencing hearing. The trial court ordered both sides to file sentence memoranda within one week, and the matter was set for the imposition of sentence on July 31, 2000. (Stipulations, ¶ 8.)

15. On or about July 31, 2000, the trial court entered its Order on Sentence of Death. (Stipulations, ¶ 9.)

16. Throughout Overstreet's trial and sentencing, respondent was Johnson County's Chief Deputy Prosecutor. Respondent led the team prosecuting the case. (Stipulations, ¶ 10.)

17. On February 23, 2003, the Indiana Supreme Court issued its Opinion in the case of *Overstreet v. State,* 783 N.E.2d 1140 (Ind. 2003), wherein it upheld Overstreet's convictions and death sentence but vacated Overstreet's conviction for criminal confinement as a class B felony, noting that Overstreet should have been convicted of

criminal confinement as a class D felony. The Court remanded the case to the trial court for resentencing as to this particular conviction. (Stipulations, ¶ 11.)

18. On or about June 27, 2003, the trial court entered its Amended Order on Sentencing pursuant to the Supreme Court's February 23, 2003 Order. (Stipulations, ¶ 12.)

19. Respondent did not participate as an attorney in Overstreet's appeal. (Stipulations, ¶ 13.)

20. On or about June 12, 2003, and June 17, 2003, attorneys Thomas C. Hinesley and Kathleen Cleary filed their appearances for Overstreet. Overstreet's attorneys filed a "Notice of Intent to File Petition for Post-Conviction Relief" ("PCR petition"), as well. (Stipulations, ¶ 14.)

21. Following a hearing on Overstreet's PCR petition, and denial of same by the trial court, the Indiana Supreme Court, on November 27, 2007, affirmed the trial court's order. (*Overstreet v. State*, 877 N.E.2d 144 (Ind. 2007).) (Stipulations, ¶ 15.)

22. Respondent did not participate as an attorney in the trial court's hearing of Overstreet's PCR petition nor during the appeal of the trial court's ruling to the Indiana Supreme Court. (Stipulations, ¶ 16.)

23. On or about September 3, 2013, the Indiana Supreme Court issued an Order "authoriz[ing] the filing of a successive petition for post-conviction relief in the Johnson Superior Court for the purpose of presenting the claim that Overstreet is not currently competent to be executed". (*Overstreet v. State*, 993 N.E.2d 179 (Ind. 2013).) (Stipulations, ¶ 17.)

24. On or about February 19, 2014, the judge who had presided over Overstreet's trial, sentencing, and the hearing on his initial PCR petition, the Honorable Cynthia Emkes,

filed with the Indiana Supreme Court a Notice of Recusal and Request for Appointment of a Special Judge. (Stipulations, ¶ 18.)

25. On or about March 12, 2014, the Indiana Supreme Court granted Judge Emkes' Notice of Recusal and Request for Appointment of a Special Judge and appointed the Honorable Jane Woodward Miller, Judge, St. Joseph County Superior Court ("Judge Miller"), to hear Overstreet's successive petition for post-conviction relief. (Stipulations, ¶ 19.)

26. Following litigation of Overstreet's successive petition for post-conviction relief, Judge Miller, on or about November 20, 2014, issued her Order granting the petition. Overstreet's death sentence was, as a result, set aside. (Stipulations, ¶ 20.)

27. Respondent, by now Johnson County's elected prosecutor, did not participate in the litigation of Overstreet's successive petition for post-conviction relief. (Stipulations, ¶ 21.)

28. After Judge Miller issued her Order on November 20, 2014, respondent was quoted in an *Indianapolis Star* newspaper article ("Indy Star quote"), written by reporter Vic Ryckart ("Ryckart"), as follows:

> "I was angry and suspicious when this case was sent to a distant judge who is not accountable to the Johnson County citizenry or a grieving mother who couldn't even afford to drive up for the hearing. The idea that this convicted murdering monster is too sick to be executed is nothing short of outrageous and is an injustice to the victim, her mother, the jury and the hundreds of people who worked to convict this animal."

Respondent has not and does not deny making this statement, in the form of a text message, to Ryckart. (Stipulations, ¶ 22.)

29. Respondent was also quoted in a November 20, 2014 article by the Associated Press ("AP quote") as saying:

> "Once this case got shipped to a distant judge who is not beholden to the voters and citizens of Johnson County, it didn't surprise me that she didn't want to create the headache for herself by keeping with this case . . . I think the idea that this rapist murderer is basically too sick to be executed is ridiculous."

(Stipulations, ¶ 23.)

30. In its Verified Complaint against respondent, filed on September 2, 2015, the Commission alleged that respondent's Indy Star quote and respondent's AP quote were a violation of Rule 8.2(a) of the Indiana Rules of Professional Conduct.

31. On September 11, 2015, respondent wrote a letter to Judge Miller, wherein he stated:

> "I want to apologize for the commentary I directed at you after your ruling in the Overstreet matter. I should not have directed my frustration with our criminal justice system at you and I unequivocally apologize for having done so. I was only recently made aware of your letter to the Supreme Court. Had I known of its existence earlier, this letter would have found you sooner. I wanted to convey my apology to you before I addressed the complaint filed by the [Commission], as I have always found apologies issued as part of a sanction to be hollow. As I know what it is like to receive public ridicule only to later receive a less than public apology, I am happy to forward this letter to any media source you may desire or post it on my website. To say or explain anymore might in some way diminish the sincerity with which I send this letter. Again, my apologies for my commentary and any negative impact it had on you."

(Respondent's Exhibit A.)

32. In paragraph 24 of his Answer, filed on October 29, 2015, respondent admitted making the Indy Star quote.

33. In paragraph 25 of his Answer, respondent stated the following with regard to the AP quote:

> "The Respondent does not recall saying the exact quote referenced in rhetorical paragraph 25, but does recall that

> he attempted to recite his quote given to the *Indianapolis Star* (see rhetorical paragraph 24). The nature of each quote, admittedly, has the same flavor so Respondent believes he recited the context of the [Indy Star quote] to subsequent press inquiries as the [Indy Star] quote was already out in the press."

34. Respondent, in his Answer, denied that either the Indy Star quote or the AP quote constitute a violation of Rule 8.2(a) of the Indiana Rules of Professional Conduct.

35. The parties' Joint Stipulations were filed with the Hearing Officer on September 13, 2016. Paragraph 23 of the Joint Stipulations states only that respondent "denies making the statement as it appeared in the AP news story [the AP quote]". (Stipulation, ¶ 23.)

36. Additional facts will be provided, as necessary, throughout the remainder of this document. To the extent any Findings of Fact are deemed Conclusions of Law, they are hereby incorporated as additional Conclusions of Law.

III.
CONCLUSIONS OF LAW

37. The issue before the Hearing Officer, as framed by the Commission's Verified Complaint, is whether or not the Commission has proved by clear and convincing evidence that respondent violated Rule 8.2(a) of the Indiana Rules of Professional Conduct.

38. The Commission has the burden of proving by clear and convincing evidence each element of the violation(s) alleged in the Verified Complaint. Admis. & Disc. R. 23 § 14(i) (providing that "the hearing officer shall determine whether misconduct has been proven by clear and convincing evidence"); *Matter of Haughee*, 795 N.E.2d 450, 451 (Ind. 2003) (*citing Matter of Christoff and Holmes*, 690 N.E.2d 1135, 1139 (Ind. 1997)

(noting that in an attorney disciplinary proceeding, "the Commission carries the burden of proof to demonstrate attorney misconduct by clear and convincing evidence")).

39. The facts in the immediate case are not really in dispute. The parties submitted their stipulations before the final hearing in this matter. The parties' stipulations are almost identical to the facts listed above in the **FINDINGS OF FACT**. Moreover, the parties' stipulations" contain almost the very same facts alleged in the Commission's Verified Complaint and admitted to in the respondent's Answer.

40. The only significant difference between the facts alleged in the Commission's Verified Complaint, the respondent's Answer, and the parties' stipulations, concerns the exact language of respondent's AP quote. However, because the respondent has admitted in his Answer that "[t]he nature of each quote, admittedly, has the same flavor"—in other words, that the Indy Star and the AP quotes are so similar in nature as to express the same meaning—and because respondent has admitted to making the statement that constitutes the Indy Star quote, the Indy Star quote will be relied upon, exclusively, to determine whether respondent violated Rule 8.2(a) of the Indiana Rules of Professional Conduct.

41. Rule 8.2(a) of the Indiana Rules of Professional Conduct states:

> "(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office."

42. There is no argument that respondent, a lawyer admitted to practice in the State of Indiana, made a statement when he sent a text message to Vic Ryckart of the *Indianapolis Star* after Ryckart asked respondent if he had any comment about Judge Miller's November 20, 2014 order granting Overstreet's subsequent PCR petition. Respondent

does not contest this fact. (Tr., p. 10, lines 22-25; p. 11, lines 1-25; p. 12, lines 1-4; p. 40, lines 10-16; p. 53, lines 1-9.)

43. Respondent does contest that his statement to Ryckart was *directed at* Judge Miller. (Tr., p. 13, lines 23-25; p. 14, lines 1-4; p. 16, lines 16-19; p. 68, lines 9-20; p. 78, lines 12-24.) In essence, respondent argues, his statement to Ryckart was nothing more than a generalized expression of frustration that a convicted murderer would no longer be sentenced to death, as originally ordered by the trial court. (Tr., p. 13, lines 23-25; p. 14, lines 1-4.) Thus, respondent claims, his Indy Star quote was not a criticism of either Judge Miller or her ruling in Overstreet's case.

44. Respondent's argument on this point, however, is undermined by his September 11, 2015 letter to Judge Miller. In his September 11, 2015 letter to Judge Miller, respondent stated, "I want to apologize for the commentary *I directed at you* after your ruling in the Overstreet matter". Respondent went on to say, "I should not have *directed my frustration* with our criminal justice system *at you* and I unequivocally apologize for having done so". (Respondent's Exhibit A, emphases added.)

45. Additionally, respondent stated in his letter to Judge Miller, "As I know what it is like *to receive public ridicule* only to later receive a less than public apology, I am happy to forward this letter to any media source you may desire or post it on my website". (Respondent's Exhibit A, emphases added.) When asked by counsel for the Commission what he thought the term "ridicule" meant—what does it mean "if I say I'm ridiculing you, what am I doing to you?"—respondent, without hesitation, stated it means you're "insulting me". (p. 42, lines 5-11.)

46. Respondent's own words—in both his September 11, 2015 letter to Judge Miller, and during his testimony during the final hearing—demonstrate that his Indy Star quote was directed at Judge Miller for her September 20, 2014 ruling. Likewise, respondent's Indy Star quote ridiculed Judge Miller for her ruling. Respondent cannot now be heard to say that his statement was not directed at a judge for the judge's ruling in a manner, nor that such statement was not a way of ridiculing the judge for the ruling.

47. During the final hearing, respondent also claimed that he did not violate Rule 8.2(a) of the Indiana Rules of Professional Conduct because, according to him, so long as a lawyer's statement about a judge is not a "knowingly false statement", then there has been no rule violation. (Tr., p. 73, lines 17-22.) In essence, respondent maintained, his interpretation of Indiana's professional conduct rules is that a lawyer is not prohibited from publically ridiculing a judge for a ruling provided that the lawyer does not make a knowingly false statement. (Tr., p. 74, lines 1-11.)

48. In *Matter of Dixon*, 994 N.E.2d 1129 (Ind. 2013), our Supreme Court considered whether a lawyer's statements made in a motion for change of judge in a criminal case violated Rule 8.2(a) of the Indiana Rules of Professional Conduct.

49. The *Dixon* Court set forth Indiana's standard for determining whether a lawyer's statement violated Rule 8.2(a). The Court held that the standard for this determination is as follows:

> "We therefore adopt an objective test for attorney statements under Rule 8.2(a): Did the attorney lack any objectively reasonable basis for making the statement at issue, considering its nature and the context in which the statement was made. [Citations omitted.] The extent to which the attorney discloses accurate facts to support the statement is relevant to the determination of whether the attorney acted in reckless disregard as to its truth or falsity. [Citation omitted.]"

Matter of Dixon, 994 N.E.2d 1129, 1136-37 (Ind. 2013).

50. The nature of respondent's statement and the context in which it was made are not an issue. Respondent's statement, as reported by the *Indianapolis Star*, publically ridiculed Judge Miller for the ruling she made on Overstreet's successive PCR petition.

51. The issue, then, is whether respondent lacked "any objectively reasonable basis for making the statement at issue". Relevant to this determination is "whether the attorney acted in reckless disregard as to [his statement's] truth or falsity".

52. Respondent testified that, at the time Overstreet's case was transferred to Judge Miller, he didn't know anything about South Bend or its judiciary. (Tr., p. 14, lines 23-24.) Respondent also stated that he knew nothing about Judge Miller (Tr., p. 14, line 25); that he had never appeared before her (Tr., p. 15, lines 15-17); that he had never practiced in front of her (Tr., p. 15, lines 15-17); that he never had any cases against her (Tr., p. 15, lines 18-20); and that he had never even heard Judge Miller's name. (Tr., p. 15, line 17.) Indeed, respondent agreed that he had no reason "to believe that Judge Miller, when she heard Overstreet's successive petition for post-conviction relief, would do anything other than base her decision on the facts presented at the hearing and on the law as she believed it to be". (Tr., p. 15, lines 21-25 and p. 16, line1; p. 37, lines 10-18.)

53. Furthermore, respondent conceded that like the oath he took when he was sworn in as Johnson County's elected prosecutor, Indiana's judges take an oath whereby they swear or affirm that they will uphold the Constitution of the State of Indiana and of the United States. (Tr., p. 36, lines 11-19.) Respondent testified he had no reason to believe Judge Miller was any less committed to abiding by her oath than he is to abiding by his. (Tr., p. 37, lines 10-18.)

54. Implicit in respondent's Indy Star quote is his belief that because Judge Miller was a "distant judge who is not accountable to the Johnson County citizenry", Judge Miller would somehow rule "incorrectly" on Overstreet's successive PCR petition—that Judge Miller's ruling would not take into account the wishes of the citizens of Johnson County because Judge Miller is not beholden to these citizens for her place on the bench. This very well may have been what respondent thought and how he felt. Fortunately, Indiana's judges are not expected to bow to political considerations when making their rulings.

55. Additionally, respondent's statement that "the idea that this convicted murdering monster is too sick to be executed is nothing short of outrageous and is an injustice" was a direct reference to Judge Miller's ruling on Overstreet's successive PCR petition. Respondent was criticizing Judge Miller's "idea", and respondent stated that Judge Miller's "idea" was "nothing short of outrageous and . . . an injustice". This comment, coming as it did immediately after respondent learned of Judge Miller's September 20, 2014 order, was a direct attack by respondent on Judge Miller and her determination of the matter she was appointed to hear.

56. Moreover, respondent has disclosed no *facts*, whether accurate or otherwise, to support his Indy Star quote. Respondent testified it is his belief that the majorities of the United States Supreme Court and Indiana's Supreme Court that have held it to be unconstitutional for the state to execute mentally disabled prisoners are wrong. (Tr., p. 26, lines 2-11; p. 71, lines 5-13; p. 73, lines 13-16.) Obviously, respondent is entitled to his opinion on this issue. But respondent's Indy Star quote was not merely a statement of respondent's opinion. Respondent's Indy Star quote was, as has already been pointed out,

an attack on Judge Miller and her November 20, 2014 ruling on Overstreet's successive PCR petition.

57. Respondent testified that he knew nothing about Judge Miller. Respondent testified, as well, that he had no reason to believe Judge Miller would rule based on anything other than the facts she heard, the law she believed applied, and the oath she took to uphold the constitutions of the United States and of the State of Indiana. Respondent has, then, disclosed no facts to support his Indy Star quote. Thus, respondent "acted in reckless disregard as to his statement's truth or falsity". Accordingly, respondent "lacked any objectively reasonable basis for making" the statement he made to Vic Ryckart.

58. Because respondent lacked any objectively reasonable basis for criticizing Judge Miller and her decision in Overstreet's case, the Commission has proven by clear and convincing evidence that respondent violated Rule 8.2(a) of the Indiana Rules of Professional Conduct.[1]

IV.
RECOMMENDED SANCTION

59. When determining the appropriate sanction to impose on an attorney who has violated the Rules of Professional Conduct, the Indiana Supreme Court has held:

> "Our analysis of appropriate discipline entails consideration of the nature of the misconduct, the duties violated by the respondent, any resulting or potential harm, the respondent's state of mind, our duty to preserve the integrity of the profession, the risk to the public should we allow the respondent to continue in practice, and matters

[1] Respondent also testified that his use of the word "was"—"I *was* angry and suspicious"—at the beginning of his Indy Star quote shows that he was "angry and suspicious" at the time Overstreet's case was first sent to Judge Miller. (Tr., p. 69, lines 13-17; p. 70, lines 1-7.) Why respondent believes this somehow relieves him of accountability for his statement is a mystery to the Hearing Officer. Respondent cannot be held professionally responsible for his thoughts. Thus, *when* respondent was "angry and suspicious" is irrelevant. Instead, the Rules of Professional Conduct govern a lawyer's actions and words. In this instance, it was respondent's statement, made after Judge Miller's ruling, that has rightly drawn the Commission's attention.

in mitigation and aggravation."

Matter of Selner, 36 N.E.3d 1048, 1049-50 (Ind. 2015) (citing *Matter of Newman*, 958 N.E.2d 792, 800 (Ind. 2011)).

60. In determining the proper sanction to recommend for consideration by the Supreme Court, the nature of the misconduct and/or the Rule violated have been set forth above in the Findings of Fact and Conclusions of Law. Concerning the other factors as set forth in *Selner*, *supra*, this Hearing Officer finds the following considerations to be significant:

    A. Any resulting or potential harm was limited to those individuals who may have read respondent's comments in the media and the thoughts these individuals may have entertained about Judge Miller and her ruling as a result of respondent's comments. This is not to say that the resulting or potential harm from respondent's comments was somehow non-existent or insignificant. Instead, it is unknown how much force such comments carried in the public's mind.

    B. Respondent's state of mind merits consideration. Obviously, the respondent lashed out at Judge Miller after she made her ruling. This demonstrates that his state of mind, at least in this instance, was not one of calm reflection. Nor did respondent appear to exhibit a calm demeanor during his testimony at the final hearing in this matter. He often exhibited a tendency to evade answering questions put to him or to jump from one line of thought to another. As an example, when counsel for the Commission asked respondent about that portion of his Indy Star quote regarding his anger and suspicion when Overstreet's case was sent to a "distant judge who is not accountable to the Johnson County citizenry", respondent seemed to lose focus on the line of inquiry. Respondent

stated, "you skipped over the word 'when'. I was angry and suspicious when this case was sent, okay? That's past tense, months before. That's what—that is to what that was referring". (Tr., p. 69, lines 9-17.)

From the testimony of the many witnesses who appeared on respondent's behalf, it is obvious he is a highly regarded attorney in Johnson County. Most of these same witnesses, however, also testified to respondent's penchant for being "brutally honest" (Tr., p. 83, line 16), and honest "to a fault" (Tr., p. 98, line 21; p. 111, lines 1-5). Honesty is always a worthwhile quality in a person. However, someone who is "brutally honest" or "honest to a fault" is also someone who is unable to keep his thoughts from controlling his conduct or, in this case, his speech.

A lawyer who occupies a special position of trust and authority in a community, as does respondent, must always be aware that his state of mind cannot dictate the words that come out of his mouth. Respondent's state of mind at the time he made his comment to Vic Ryckart was one of frustration. Respondent should have known better than to let his anger get the better of him. The respondent should have made every attempt to separate his emotions from what was required of him by the professional conduct rules in his statement to the media.

C. Whether respondent's misconduct has had any impact on the integrity of the profession is similar to inquiring into the resulting or potential harm caused by his statement. There is no doubt that respondent's statement impugned the integrity of a sitting trial court judge. However, it is difficult to gauge what impact, if any,

this statement may have had on the integrity of the legal profession. Respondent acknowledged, during his testimony, that Judge Miller was undoubtedly offended by the statement. (Tr., p. 61, lines 1-4.) Be this as it may, the extent of any negative impact on the integrity of the legal profession, as a whole, should not be inferred or guessed at. A single statement, without more, may very well escape the public's attention. Respondent should temper any future remarks about judges or rulings so that it does not appear as if he is on some kind of crusade. But an isolated instance of misconduct, such as respondent's in this case, does not necessarily mean that the integrity of the legal profession has suffered any negative impact.

D. There has been no evidence presented to show that respondent is a risk to the public should he be allowed to continue practicing law. This is not to say that the Hearing Officer is unconcerned by respondent's tendency to speak his mind—to be honest "to a fault", as so many of the witnesses testifying on his behalf stated—whenever circumstances don't go as respondent might wish them to. But respondent's unwillingness or inability to curb his utterances has not, until now, been the subject of complaint by judges or others in the legal profession. It is hoped that this incident has instilled in respondent a heightened sense of caution when faced with similar circumstances.

E. No evidence was presented in support of aggravating circumstances.

The respondent, throughout the hearing of this matter, took the somewhat questionable position that his statement regarding Judge Miller's November 20, 2014 ruling did not violate Rule 8.2(a) of the Indiana Rules of Professional

Conduct. This position seems to be based on respondent's mistaken notion that he did not direct his comment *at* Judge Miller. Obviously, respondent is wrong on this point, and his continued inability to accept the wrongfulness of his conduct causes some concern that he lacks insight into the nature of his misconduct. This concern is heightened by the sense that those individuals who work in the same legal community as respondent appear unwilling, themselves, to admit that respondent violated the Rules of Professional Conduct. As one witness stated, "if [respondent] intended to make a statement about the judge in this particular case or any case, none of us would be able to sit here in this courtroom and defend him today". (Tr., p. 120, lines 14-17.) Such support, though noble, is unwarranted in this case.

This Hearing Officer believes, though, that it is difficult for the respondent to totally acknowledge the wrongful nature of his conduct because it appears that except for his statement following Judge Miller's ruling, respondent has conducted himself and his career as an attorney with high ethical standards, ability, skills, and knowledge. Therefore, this Hearing Officer cannot find that the position taken by the respondent should aggravate any sanction that is imposed.

F. Concerning mitigating circumstances, respondent has no prior disciplinary history. His actions, though the product of misguided emotion, do not appear to have been motivated by dishonesty or greed. The parties' stipulations show that, to a large extent, the respondent has cooperated with the Commission in its investigation of this matter. Respondent has, furthermore, shown remorse for his misconduct: A little more than one week after the Commission filed its Verified

Complaint against respondent, respondent wrote a letter of apology to Judge Miller. In his apology letter, respondent offered to publicize this letter or, at the very least, to post it on his website. There is no evidence that respondent felt compelled by any outside party to send this letter to Judge Miller, and he did so even before he filed his Answer to the Commission's Verified Complaint.

61. The Hearing Officer respectfully recommends that the Indiana Supreme Court impose discipline upon the respondent in the form of a public reprimand.

Date: _____

_____
Charles K. Todd, Hearing Officer

Copies to:

Mr. Bradley D. Cooper
c/o Mr. James H. Voyles, Jr.
c/o Ms. Jennifer M. Lukemeyer
VOYLES ZAHN & PAUL
141 East Washington Street
Suite 300
Indianapolis, IN 46204

Mr. David E. Griffith
Staff Attorney
Indiana Supreme Court
Disciplinary Commission
30 South Meridian Street
Suite 850
Indianapolis, IN 46204

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2016, I electronically filed a copy of the foregoing document using the Indiana E-filing System. I also certify that on December 13, 2016, the foregoing "Proposed Hearing Officer's Preliminary Proceedings, Findings of Fact, and Conclusions of Law Submitted by Counsel for the Disciplinary Commission" was served upon the following individual(s) via the Indiana E-Filing System:

Mr. Bradley D. Cooper
c/o Mr. James H. Voyles, Jr.
c/o Ms. Jennifer M. Lukemeyer
VOYLES ZAHN & PAUL
141 East Washington Street
Suite 300
Indianapolis, IN 46204

I hereby further certify that on December 14, 2016, the foregoing "Proposed Hearing Officer's Preliminary Proceedings, Findings of Fact, and Conclusions of Law Submitted by Counsel for the Disciplinary Commission" was served upon the following individual(s) by sending it United States First Class Mail, postage prepaid:

The Honorable Charles K. Todd, Jr.,
Hearing Officer
Judge, Wayne Superior Court #1
301 East Main Street
Richmond, IN 47374

Finally, I certify that on December 14, 2016, a courtesy copy of the foregoing "Proposed Hearing Officer's Preliminary Proceedings, Findings of Fact, and Conclusions of Law Submitted by Counsel for the Disciplinary Commission" was sent, via electronic mail, to the following individual(s):

The Honorable Charles K. Todd, Jr.,
Hearing Officer
Judge, Wayne Superior Court #1
ctodd@co.wayne.in.us

By: /David E. Griffith/
David E. Griffith,
Staff Attorney

Indiana Supreme Court
Disciplinary Commission
30 South Meridian Street
Suite 850
Indianapolis, IN 46204
(317) 234-6002
david.griffith@courts.in.gov