

___/s/Jennifer M. Lukemeyer_____
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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 FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

The Indiana Supreme Court Disciplinary Commission (“Commission”) filed its Verified Complaint for Disciplinary Action on which this action commenced. The Commission filed the complaint on September 2, 2015, to which Respondent Bradley D. Cooper filed his response on October 29, 2015. The matter came before the Honorable Charles K. Todd for hearing on October 5, 2016. The Commission appeared by counsel, Mr. David E. Griffith. Respondent Cooper appeared in person and by counsels, Mr. James H. Voyles and Ms. Jennifer M. Lukemeyer. The Commission called one witness, Respondent Cooper. Respondent Cooper called numerous witnesses to attest to his character, particularly his reputation for honesty and truthfulness.

FINDINGS OF FACT

Respondent Bradley D. Cooper was admitted to the practice of law in Indiana in October of 1993. Cooper is a lawyer in good standing and has had no discipline complaints filed against him prior to this complaint. Cooper has been the elected Prosecutor for Johnson County Since January, 2009. In 1997, Franklin College freshman Kelly Eckart was abducted, rape and brutally murdered in Johnson County. The State charged Michael Dean Overstreet with the murder, rape and confinement of Eckart. The State also sought the death penalty against Overstreet.

At the time of the trial, Cooper was the Chief Deputy for the Johnson County Prosecutor’s office. He, with the support of numerous others, sought the conviction of Overstreet and the death

penalty. A jury convicted Overstreet of the crimes against Kelly and, after a bifurcated sentencing hearing, the jury recommended Overstreet receive the death penalty. On July 31, 2000 Judge Cynthia Emkes accepted the jury's recommendation and sentenced Overstreet to death. Cooper did not participate as a lawyer in the litigation of the appellate and/or post-conviction process.

In 2013 Overstreet sought to file a successive post-conviction relief petition. The successive post-conviction action was filed in the original trial court and before the original trial judge, Cynthia Emkes. The basis of said petition was Overstreet's mental health and whether it had so deteriorated that he should not be executed. This was the first time Overstreet had made his mental health an issue. Overstreet did not raise a mental health defense at trial.

In February of 2014, Judge Emkes filed a Notice of Recusal and Request for Appointment of a Special Judge. The successive post-conviction petition was sent to St. Joseph County, approximately 180 miles away from where the crime occurred, and Judge Jane Woodward Miller was appointed to hear Overstreet's successive petition for post-conviction relief.

Kelly's mother, Connie Sutton, had attended every pre-trial, trial, appellate and post-conviction hearing. She and Cooper remained in contact and had a close friendship. Cooper witnessed firsthand the terrible suffering incurred by Sutton as a result of Kelly's murder. When the Overstreet case was sent 180 miles away, Sutton contacted Cooper and told him she would be unable to attend the hearings due to a lack of finances. Sutton was not consulted prior to the case being sent to the Special Judge. It upset Cooper that Connie would not be able to attend her daughter's killer's hearing. Cooper remedied the situation by using drug forfeiture funds to pay for Sutton to attend the four day hearing in South Bend.

On or about November 20, 2014, Judge Miller issued her order granting Overstreet's request for post-conviction relief which gave Overstreet a reprieve from the death penalty because of newly alleged mental health issues. Cooper learned of the news and immediately had press inquiries as to

the order. Specifically, Vic Ryckart of the Indianapolis Star asked Cooper for a comment. In a texted response, Cooper stated:

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.

The first sentence of this statement reflected Cooper's feelings *at the time the case was transferred to St. Joseph County*. Cooper was, in fact, angry that the victim's mother was not consulted prior to the transfer of the case and was financially unable to attend the hearing. While Cooper acknowledges he should have used a better term than "suspicious," it still accurately reflects that Cooper knew nothing of St. Joseph County *when the case was sent*. The St. Joseph County judiciary is not, in fact, elected by Johnson County residents and Cooper believes the citizens of Johnson County were entitled to have the case heard in the jurisdiction where Overstreet chose to abduct, rape and murder one of its citizens. At the time the case was transferred, Sutton was in fact unable to afford to attend the hearing.

The second sentence was Cooper's personal opinion that he did not believe Overstreet was "too mentally ill" to be executed, especially given the fact that this was the first time Overstreet's mental capacity had been raised to the degree it could have excused him from the death penalty. Cooper holds an honest belief that that Overstreet was a "monster" due to what he had done to Kelly Eckhart.¹ Finally, numerous people did in fact work to convict Overstreet. Cooper believed Overstreet avoiding the death penalty was an injustice to Kelly and her mother.

Cooper's testimony as to the aim and content of his statement was uncontroverted.

¹ Kelly was a 19 year old college student who was abducted by Overstreet, taken to a remote location where she was raped and killed. Overstreet had cut her clothing off and her shoestrings off with which he strangled her.

The evidence is uncontroverted that Cooper's statement was not directed towards Judge Miller in any way, nor did Cooper's statement contain a personal attack on Judge Miller's qualification or integrity. Further, the substance of Cooper's statement was either factually supported as detailed above or Cooper's factually supported opinions about the case.

In a separate article by the Associated Press, the AP quoted Cooper 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.

Cooper has always denied having said what was reported by the AP and the Commission has failed to produce any evidence to support its claim Cooper made the statement.

When Cooper was first advised that Judge Miller took offense to his statement to The Star and the misstatement reported by the AP, Cooper offered an unequivocal and sincere apology to Judge Miller as Cooper strongly believes if you offend someone, even unintentionally, a genuine apology is warranted. His explanation of the unqualified apology greatly mitigates whatever unintentional harm the statements rendered.

Clear from the evidence is that Cooper, by every measure of the uncontroverted testimony of his peers, adversaries and the judicial officers before whom he appears, has a reputation for honesty, truthfulness and unquestioned integrity which is beyond reproach. All the witnesses called by Cooper provided consistent testimony that Cooper takes his role as a "Minister of Justice" most seriously. The witnesses not only provided reputation testimony, but also provided specific examples of how Cooper acted in conformity with that integrity described in their testimony.

During the time prior to the Overstreet ruling and Cooper's statement, Cooper endured a series of emotional traumas, Cooper's mother, sister and his Chief of Staff, who was also a close friend, died after painful bouts with cancer. Cooper also separated from and divorced his wife of

twenty years. The deaths and the divorce took a personal toll on Cooper. Nevertheless, Cooper continued to steadfastly maintain his professional role as the elected prosecutor of Johnson County.

CONCLUSIONS OF LAW

Indiana Professional Conduct Rule 8.2(a) prohibits an attorney from making statements *known to be false or with reckless disregard as to the truth or falsity* concerning the qualifications or integrity of a judge. The Commission bears the burden of proving the misconduct by “clear and convincing” evidence. Admission and Discipline Rule 23, Sect 14(i).

This court concludes Cooper did not violate Rule 8.2(a) as the Commission failed to prove by clear and convincing evidence that Cooper’s statement to the Indy Star was in anyway directed at Judge Miller, nor did the statement question Judge Miller’s qualifications or her integrity.

Further, the Commission failed to prove by clear and convincing evidence (or any evidence for that matter) Cooper made the statement reported by the AP.

In examining whether an attorney’s statements violate this rule, *the Commission must show* by clear and convincing evidence that the attorney lacked any objective reasonable basis for the statements. *In re Dixon*, 994 N.E.2d 1129, 1137 (2013).

Comment [1] of Prof. Conduct R. 8.2(a) reads:

Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. **Expressing honest and candid opinions on such matters contributes to improving the administration of justice.** Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

Violations of Prof. Conduct R. 8.2(a) often occur in the context of public comments made by attorneys outside the legal forum or proceeding. *See, e.g., Matter of Reed* 716 N.E.2d 426 (Ind. 1999); *Matter of Atanga* 636 N.E.2d 1235 (Ind. 1996); and, *Matter of Garringer*, 626 N.E.2d 809 (Ind.

1994). The above referenced cases involved direct statements about judicial officers being ignorant of the law, racists or engaging in criminal behavior. Nothing in such statements promoted the administration of justice and would undermine the public confidence in the administration of justice.

For example in *Reed*, Reed was the elected prosecutor of Delaware County when he disagreed with a judicial officer's decision to preside over certain cases. Reed gave a press interview to various news outlets and was quoted in the local papers. The quotes cited the judge's arrogance outweighed her ignorance; that the judge was engaging in political squabbling, and that the judge has no comprehension as to a certain type of case. *Reed*, at 427. The *Reed* opinion focused on the fact that the comments "were vituperative, deliberate, premeditated, and broadcast with the clear intent to embarrass the judge and to detract from the stature of her position." *Id.* at 427, 428. Our Supreme Court found that Reed's conduct "breeds mistrust and lack of confidence in the competence and integrity not only of the criticized judge but of the entire adjudicatory system in the state." *Id.* at 428.

Cooper's statements were nothing like those of *Reed* or the other cited cases. At the hearing, Cooper provided factual evidence that every matter referenced in his statement was truthful. Cooper was, in fact, angry that the victim's mother was not consulted prior to the transfer of the case and was financially unable to attend the hearing. While Cooper acknowledges he should have used a better term than "suspicious," it still accurately reflects that Cooper knew nothing of St. Joseph County *when the case was sent*. St. Joseph County is about as far away as one can get from Johnson County and still be in Indiana. The St. Joseph County judiciary is not, in fact, accountable to Johnson County residents. This is all true.

In his statement, Cooper's reference to Overstreet being "too sick to be executed" was his opinion as to Overstreet not being mentally ill. Cooper explained mental illness played no role in the initial defense of Overstreet and Cooper believed that Overstreet should not be deemed too

mentally ill to be executed. Clearly his statements are of his personal opinion about the case in which he was deeply vested. His reference to Overstreet as being a “monster” is just another example of him opining as to the case (here the defendant) and not the Court. The monster comment represents the particularly heinous nature of the crime committed by Overstreet.

Finally, Cooper sought the ultimate punishment for Overstreet and, after an emotional trial, believed he had received justice for the victim, her mother and the persons to whom he is ultimately accountable, the citizens of Johnson County. His comments reflected such and were not a comment upon the integrity or the qualifications of Judge Miller.

Accordingly, the Commission failed to prove by clear and convincing evidence that Cooper knowingly made a false statement concerning Judge Miller’s qualifications or integrity or made his statement with reckless disregard as to its truth or falsity.

It is the conclusion of this Court that the Commission failed to satisfy its burden on each aspect of this matter.

It is the conclusion of this Court that Cooper, who by the evidence and the uncontroverted testimony of his peers, adversaries and the judicial officers before whom he appears, has a reputation for honesty, truthfulness and unquestioned integrity.

DATED: _____, 20__.

Honorable Charles K. Todd
Hearing Officer

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