

In the
Indiana Supreme Court



In the Matter of:) Supreme Court Cause No.
David L. MARTENET,) 49S00-0807-DI-412
Respondent.)

PUBLISHED ORDER FINDING MISCONDUCT AND IMPOSING DISCIPLINE

Upon review of the report of the hearing officer, the Honorable Dan E. Marshall, who was appointed by this Court to hear evidence on the Indiana Supreme Court Disciplinary Commission's "Verified Complaint for Disciplinary Action," and the Commission's brief regarding sanction (Respondent filed no brief), the Court finds that Respondent engaged in professional misconduct and imposes discipline on Respondent.

Facts: Based on an incident on September 27, 2006, Respondent pled guilty on March 22, 2008, to operating a vehicle with a B.A.C. of 0.15% or greater, a class A misdemeanor. His sentence includes the requirement that he continue with an existing monitoring agreement with the Judges and Lawyers Assistance Program ("JLAP").

After Respondent's arrest, the Commission sent him a claim of misconduct by certified mail, demanding a written response within 20 days. He did not respond to this or to the follow-up demand letter. He did not respond until after the Commission filed a show cause petition and this Court ordered him to respond.

Respondent has prior convictions for OWI in 1991, 1992, and 1996, the last one being a class D felony. In addition, he has the following disciplinary history:

- (1) Matter of Martenet, 674 N.E.2d 549 (Ind. 1996). Six month suspension for guilty finding, stayed for 12 months on condition of continuation with alcohol abuse aftercare program. Released from probation 5/22/98.
- (2) 6/6/97: Continuing legal education noncompliance suspension. Reinstated 6/18/97.
- (3) Matter of Martenet, 745 N.E.2d 192 (Ind. 2000). Order approving Statement of Circumstances and Conditional Agreement for Discipline for 60 day suspension with automatic reinstatement (1/22/01 to 3/-24/01).
- (4) 3/13/07: Show cause petition for failure to respond to request for information related to current case; dismissed with costs, 4/24/07.
- (5) 3/18/08: Suspension for failure to pay costs from show cause action; reinstated 4/1/08.

Facts in mitigation are: (1) Respondent is in compliance with an interim JLAP monitoring agreement; (2) he is currently attending Alcoholics Anonymous; and (3) he has admitted the charged misconduct.

Violations: The Court finds that Respondent violated these Indiana Professional Conduct Rules prohibiting the following misconduct:

8.1(b): Failure to respond in a timely manner to the Commission's demands for information.

8.4(b): Committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

Discipline: For Respondent's professional misconduct, the Court **suspends Respondent from the practice of law in this state for a period of at least 12 months, without automatic reinstatement, beginning November 9, 2009.** 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 that period, Respondent may petition this Court for reinstatement to the practice of law in this state, provided Respondent pays the costs of this proceeding, fulfills the duties of a suspended attorney, and satisfies the requirements for reinstatement of Admission and Discipline Rule 23(4). If reinstatement is sought, it would likely be granted only with the involvement of and monitoring by the Indiana Judges and Lawyers Assistance Program.

The costs of this proceeding are assessed against Respondent. 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.

DONE at Indianapolis, Indiana, this 29th day of September, 2009.

/s/ Randall T. Shepard
Chief Justice of Indiana

All Justices concur.