



Indiana Court Bars Lawyer For Criticizing An Opinion

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Michael A. Wilkins, a lawyer in Indianapolis, will not be welcome in the Indiana courts for 30 days starting in early December. The Indiana Supreme Court, in a 3-to-2 decision, disciplined Mr. Wilkins on Tuesday, ruling that a footnote, in a brief, that criticized a lower court undermined "the public's confidence in the administration of justice."

The decision is unusual, legal ethics experts said, given the tame language in the footnote, the severity of the penalty and the fact that one of the justices who decided Mr. Wilkins's case was involved in the case the footnote cited and possibly had a conflict of interest.

The footnote criticized a ruling of the Indiana Court of Appeals in an insurance dispute as intellectually dishonest.

"The opinion," the footnote said, "is so factually and legally inaccurate that one is left to wonder whether the Court of Appeals was determined to find for" the defendant "and then said whatever was necessary to reach that conclusion."

Justice Robert D. Rucker voted with the majority to suspend Mr. Wilkins. Before Justice Rucker was appointed to the Indiana Supreme Court, he was on the Court of Appeals and was one of the three judges who heard the insurance case that was criticized in the footnote. At the time, Judge Rucker concurred with the decision in the insurance case but not in its reasoning. He did not explain his reasoning.

Monroe H. Freedman, an expert in judicial ethics at Hofstra Law School, said, "There is no question that he should not have sat on the case," referring to Justice Rucker's role in the Wilkins matter.

Through a court spokesman, Justice Rucker said he could not comment because the Wilkins case was still pending.

Justice Theodore R. Boehm, in a dissent, wrote that criticizing decisions as reaching a result first and crafting the reasoning afterward was routine. He noted that the Supreme Court's decision in Bush v. Gore was the subject of such criticism.

Justice Boehm said judges themselves frequently criticized each other on such grounds. He quoted a dissent this year by Justice Antonin Scalia of the Supreme Court. "Seldom has an opinion of this court rested so obviously upon nothing but the personal views of its members," Justice Scalia wrote.

In a similar case, the federal appeals court in San Francisco in 1995 overturned a two-year suspension of Stephen Yagman, a California lawyer. Mr. Yagman had described a federal judge as an anti-Semite and "ignorant, dishonest, ill-tempered, and a bully." The court said the First Amendment protected these statements.

Mr. Wilkins, whom the Indiana Supreme Court described as "an experienced appellate practitioner," did not actually write the footnote, but his name appeared on the brief.

The author of the footnote, Jeffrey R. Learned, a Michigan lawyer who was the lead lawyer in the case, has accepted a public reprimand and agreed not to appear in the Indiana courts, lawyers familiar with the matter said.

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Mr. Wilkins and Mr. Learned declined to comment. G. Daniel Kelley Jr., Mr. Wilkins's lawyer, said his client was considering asking the United States Supreme Court to hear the case.

Professor Freedman was critical of the judges in the majority.

"They're reacting more like petty bureaucrats than the highest judicial officers in the state," he said.

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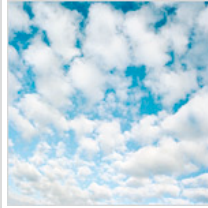
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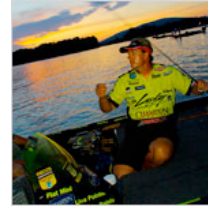
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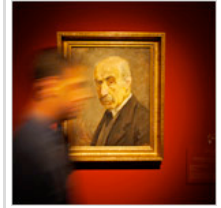
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