

FOR THE RESPONDENT

R. Michael Parker  
Barnes & Thornburg  
305 Ameritrust National Bank Bldg  
301 South Main Street  
Elkhart, Indiana 46516

FOR THE INDIANA SUPREME COURT  
DISCIPLINARY COMMISSION

Sheldon Breslow  
Executive Secretary  
Indiana Supreme Court Disciplinary  
Commission  
150 West Market Street, Suite 628  
Indianapolis, Indiana 46204

IN THE  
SUPREME COURT OF INDIANA

IN THE MATTER OF  
MAX K. WALKER, JR.

}  
} Cause No. 20S00-9006-DI-405  
}

MISC 92 90

DISCIPLINARY ACTION

Per Curiam

The Respondent, Max K. Walker Jr., was charged in a disciplinary complaint with violations of Rules 8.4(a), 8.4(b), 8.4(c), and 8.4(d) of the Rules of Professional Conduct for Attorneys at Law. The hearing officer appointed in this case tendered his findings of fact which were not challenged by the parties. He declined to reach a conclusion as to whether Respondent's conduct violated the Rules of Professional Conduct, which is the issue argued by the parties and now before us for determination.

The unchallenged findings establish that Respondent represented the grievant in her dissolution of marriage action which was concluded in December, 1982. Shortly thereafter, they developed a personal relationship which lasted until 1987 when it began to deteriorate.

On March 5, 1987, Respondent visited the grievant's home after having consumed several alcoholic beverages. They discussed their deteriorating

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relationship, which discussion evolved into an argument. The grievant asked Respondent to leave her house and walked into her bedroom, expecting him to leave. Instead, Respondent followed her into the bedroom. In the course of the ensuing argument, the grievant suggested that the Respondent should "go (and have sex)" with a woman with whom he had cocktails with earlier. Respondent then straddled the grievant, slapped her several times, and hit her in the face with a closed fist cutting her lip. As Respondent was leaving the residence, he forcibly took the telephone from and pushed the grievant's nine-year old daughter. The incident was reported to the police but the incident report was lost and was not introduced in evidence.

At the time of the incident, Respondent was Chief Deputy Prosecuting Attorney for Elkhart County. The prosecutor, who was also Respondent's law partner, advised the grievant that she had a right to a special prosecutor. She declined but requested that Respondent receive counselling, pay her medical bills, pay for her daughter's counseling and have no further contact with her. All of these requests were met. The incident was reported in the local press and Respondent received considerable publicity.

Respondent urges this Court to conclude that no professional misconduct occurred. His argument is that the physical altercation was the culmination of a private, adult relationship, and that the battery "arose instantaneously" after provocation.

The circumstances presented by the findings reveal an act of domestic violence. This admittedly criminal conduct is not and did not remain a private matter. We are not persuaded by the claim of provocation, nor are we comforted by the fact that the grievant's daughter, also a victim of

Respondent's conduct, recovered after some counselling sessions. Respondent's position as deputy prosecutor requires even stricter scrutiny of this conduct. As was stated in the Matter of Oliver (1986), Ind., 493 N.E.2d 1237, Respondent's duty to conform his behavior to the law does not arise solely out of his status as an attorney. As an officer charged with the administration of the law, Respondent's behavior has the capacity to bolster or damage public esteem for the system. Were those whose job it is to enforce the law break it instead, the public rightfully questions whether the system itself is worthy of respect. The damage this incident has undoubtedly brought to the public's esteem will be addressed only if Respondent is held accountable. We conclude that, as a prosecuting attorney, Respondent engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Also, Respondent's conduct reflects upon his fitness as a lawyer and constitutes a violation of Rule 8.4(b). Not every violation of the penal code reflects upon an attorney's suitability as a practitioner. See, Matter of Oliver, Supra. The issue is whether there exists a nexus between the misconduct and the Respondent's duties to his clients, the courts, or the legal system. Matter of Oliver, supra. Another important assessment is the impact of the conduct on the public's perception of Respondent's fitness as a lawyer. Matter of Roche (1989) Ind., 540 N.E.2d 36. As a part-time prosecutor, Respondent inevitably encounters domestic assaults, and this incident calls into question his ability to zealously prosecute or to effectively work with the victims of such crimes. As a part-time practitioner, Respondent's effectiveness with his own clients or with adversaries in situations involving issues of domestic violence is compromised by his own contribution to this escalating

societal problem. In both his capacities, we believe the perception of his fitness is tainted.

Finally, the findings do not support the Commission's allegation that Respondent committed acts of dishonesty, deceit, or misrepresentation, nor are we inclined to find as charged that Respondent violated Rule 6.4(a).

In assessing an appropriate sanction, we note that Respondent's violent outburst occurred after Respondent was asked to and expected to leave the grievant's home. Although not charged or prosecuted, Respondent's crime had two very real victims. Respondent's position as an official charged with the duty of enforcing the very laws he violated further exacerbates his actions.

In light of the foregoing, we find that the appropriate sanction is a suspension from the practice of law, and that Respondent's reinstatement should be automatic. It is, therefore, ordered that Max R. Walker, Jr. is suspended from the practice for a sixty-day period beginning September 21, 1992. Costs of this proceeding are assessed against the Respondent.

I, Dwayne Brown, Clerk of the Supreme Court and Indiana Court of Appeals do hereby certify that the above and foregoing is a full true, complete and correct copy of the original [Signature] as the same appears upon the record of said court, and in my custody as Clerk.

In testimony whereof I have hereunto subscribed my name and affixed the Seal of said Court this 21<sup>st</sup> day of Aug, 1992.

[Signature] . Clerk  
By [Signature] Deputy

IN THE MATTER OF  
MAX K. WALKER, JR.

}  
} SS:  
}

CAUSE NO. 20800-9102-DY-93

VERIFIED COMPLAINT FOR DISCIPLINARY ACTION

The Disciplinary Commission of the Supreme Court of Indiana, having found reasonable cause to believe the Respondent's acts, if proven, would warrant disciplinary action,

September 16, 1970. The Verified Complaint is as follows:

1. Respondent, Max K. Walker, Jr., is and was at all times herein a part-time Deputy Prosecutor in Elkhart County, Indiana. Michael A. Cosentino (hereinafter "Cosentino") is and was at all times herein the duly elected and acting Prosecutor in Elkhart County.

2. Respondent also maintains a civil practice in the Elkhart firm of "Slabaugh, Cosentino, Arko, Walker and Shewmaker", wherein Respondent handles predominantly domestic relations civil cases. Cosentino is and was at all times herein Respondent's partner in said law firm.

through Prosecutor, Cosentino. Said Agreement limited Respondent's duties as Deputy Prosecutor to "the prosecution of felony cases in the Elkhart Circuit Court and the Elkhart Superior Court."

4. In his capacity as a private attorney in civil cases, Respondent represented Allen Zavatsky (hereinafter

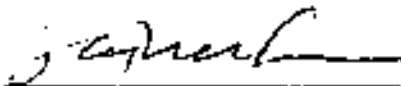
"Zavatsky") in a dissolution matter in the Elkhart Circuit Court, Cause No. 20C01-8911-DR-459.

5. During the course of Respondent's representation of Zavatsky, it was alleged that Zavatsky violated a Restraining Order entered by the Elkhart Circuit Court on or about February 6, 1990. Under Indiana Code 35-46-1-15, violation of such a Restraining Order constitutes the crime, Invasion of Privacy, a Class B misdemeanor.

6. By his conduct aforesaid, Respondent has violated Rule 1.7 of the Rules of Professional Conduct for Attorneys at Law by representing a private client, conflicting with his duties and authority as a Deputy Prosecutor.

7. By his conduct aforesaid and under Rule 1.10(a) of the Rules of Professional Conduct for Attorneys at Law Respondent was disqualified from representing a client in a domestic civil dissolution matter by virtue of his affiliation with the Prosecutor in a civil law practice and by virtue of the Prosecutor's disqualification under Rule 1.8(k).

WHEREFORE, the Executive Secretary prays that the said Max K. Walker, Jr. be disciplined as warranted for professional misconduct, and that Respondent be ordered by the Court to pay such expenses to the Clerk of the Court as shall be prepared and submitted to the Court by the Executive Secretary as an itemized statement of expenses allocable to this case incurred in the course of investigation, hearing and review procedures, pursuant to Ind. R.A.D. 23, Section 14.

  
Sheldon A. Breskow  
Executive Secretary  
Indiana Supreme Court  
Disciplinary Commission

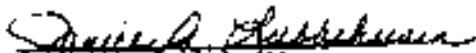
STATE OF INDIANA )  
                  ) SS:  
COUNTY OF MARION )

Sheldon A. Breskow, being duly sworn upon his oath, deposes and says that he is the Executive Secretary of the Disci-

Disciplinary Commission of the Supreme Court of Indiana appointed pursuant to Ind. R.A.D. 21, Sec. 1(a); that he makes this affidavit as Executive Secretary of the Disciplinary Commission, and that the facts set forth in the above and foregoing Verified Complaint For Disciplinary Action are true as he is informed and believes.

  
Sheldon A. Breshow

Subscribed and sworn to before me, a Notary Public, in and for said County and State, this 4<sup>th</sup> day of FEBRUARY, 1991.

  
Janice A. Lubbohusen  
Notary Public

My Commission Expires:  
4/15/91

My County of Residence: Johnson



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Verified Complaint For Disciplinary Action was deposited in the United States Mail, certified, postage prepaid, on this 5<sup>th</sup> day of FEBRUARY, 1991 to the following:

Mr. Max K. Walker, Jr.  
Attorney at Law  
115 West Lexington Avenue  
Elkhart, Indiana 46515

R. Michael Parker  
Attorney at Law  
305 Ameritrust Ntl Bank Bldg.  
131 South Main Street  
Elkhart, IN 46515

  
Sheldon A. Breshow



IN THE  
SUPREME COURT OF INDIANA

IN THE MATTER OF )  
MAX K. WALKER, JR. ) Case No. 20500-9102-DI-91  
)

ORDER ENTERING JUDGMENT FOR RESPONDENT AND DISMISSING ACTION

Comes now the Hearing Officer in this cause and files his "Findings, Conclusion, and Recommendation." And comes now the respondent and files his "Petition for Review of a Conclusion of the Hearing Officer."

And this Court, upon examination of these matters, now finds that the evidence is insufficient to support a finding of violation of any disciplinary rules. Accordingly, we find further that judgment should be entered for the respondent, and that this action should be dismissed.

IT IS, THEREFORE, ORDERED that judgment is entered for the respondent, and that this action be dismissed.

The Clerk of this Court is directed to forward notice of this Order to the respondent or his attorney, and to the Indiana Supreme Court Disciplinary Commission.

Witness my hand and seal at Indianapolis, Indiana, this 13<sup>th</sup> day of September, 1994.

Randall T. Shepard  
Randall T. Shepard  
Chief Justice of Indiana

Given, J., dissents.