

SC89623, In re: Brian Zink

Attorney disciplinary proceeding.

Attorneys: The chief disciplinary counsel was represented by Alan Pratzel and Shannon L. Briesacher of the chief disciplinary counsel's office in Jefferson City; and Zink was represented by Paul J. D'Agrosa of the Law Offices of Wolff & D'Agrosa in Clayton.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The chief disciplinary counsel seeks to discipline the law license of an attorney who offered purportedly autographed sports memorabilia to a prosecutor's office in an attempt to reduce his client's charges and who subsequently lied to investigators from the FBI and United States attorney's office. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri suspends the attorney's license indefinitely, with leave to reapply in six months. In so doing, the Court rejected a disciplinary hearing panel's recommendation to make the suspension retroactive and concurrent with the year the attorney voluntarily abstained from practicing law as part of an agreement to avoid prosecution, which would not have addressed the egregiousness of the attorney's professional misconduct or given adequate consideration to this Court's authority to regulate the practice of law.

Facts: Attorney Brian Zink was assigned to represent Mary Hart, who was charged with three counts of felony forgery. Over the course of negotiations with the prosecutor's office, Zink said Hart was the godchild of retired professional football player Terry Bradshaw. He later told Hart – in a conversation about which the FBI received information in July 2006 – that he could get the felonies “taken care of” if she produced a baseball autographed by Bradshaw, and she subsequently presented a baseball purportedly autographed by Bradshaw as well as a football and trading card. Zink told the assistant prosecutor he had the memorabilia, but the assistant prosecutor would not accept it. For reasons that are not clear, however, the charges against Hart ultimately were reduced to misdemeanors. During an August 2006 interview, Zink made false and misleading statements to the FBI, including the claim that obtaining the baseball was only a joke, and he later made similar false and misleading statements in interviews with the United States attorney's office. Zink admitted making false and misleading statements only after being confronted with a taped conversation in which he told Hart he could get the felonies “taken care of” if she produced the memorabilia. To avoid prosecution, Zink entered into a diversion agreement with the United States attorney's office in which he agreed to abstain voluntarily from practicing law for one year. He completed the terms of his diversion agreement, including abstaining from practicing law from June 25, 2007, through June 26, 2008. In October 2007, the chief disciplinary counsel's office filed an information against Zink alleging professional misconduct. Following a June 2008

hearing, a disciplinary hearing panel found, by a preponderance of the evidence, that Zink had violated certain rules of professional responsibility because of his conduct in the case involving Hart and his subsequent untruthful statements to the FBI and United States attorney's office. The panel recommended that Zink be suspended from the practice of law retroactively, for the same year in which he voluntarily abstained from practicing. The chief disciplinary counsel asks this Court to discipline Zink's law license.

SUSPENSION ORDERED.

Court en banc holds: Zink's license to practice law in Missouri is suspended indefinitely, with leave to reapply in six months. There is no dispute that Zink's actions violated Rules 4-1.4(a), 4-4.1, and 4-8.4(c) and (e) or that he should be subject to discipline. A retroactive suspension such as that suggested by Zink and the panel, however, fails to address the egregiousness of Zink's conduct or to give adequate consideration to this Court's authority to regulate the practice of law. The fundamental purpose of attorney discipline is to protect the public and maintain the integrity of the legal profession. Zink's diversion agreement, however, was made without consultation with the chief disciplinary counsel or this Court and bound only Zink and the United States attorney's office. He abstained from practicing law to avoid prosecution for making false and misleading statements. The diversion agreement addressed only the criminal matter, not ethical implications. Only after being confronted with taped conversations did Zink admit he intentionally lied to federal agents and the United States attorney's office in the course of their investigation. This conduct clearly warrants discipline, and making discipline retroactive would be akin to imposing no discipline or giving credit for "time served."