

IN THE SUPREME COURT
OF THE
STATE OF INDIANA

IN THE MATTER OF)
)
THEODORE E. ROKITA) CAUSE NO. 23S-DI-258
Attorney No. 18857-49)

VERIFIED PETITION REQUESTING CONDITIONAL AGREEMENT FOR
DISCIPLINE AND AFFIDAVIT BE RELEASED FOR PUBLIC ACCESS

The Indiana Supreme Court Disciplinary Commission (“Commission”), by its Executive Director, Adrienne Meiring, pursuant to Indiana Access to Court Records Rule 9(B), petitions the Indiana Supreme Court to release for public access the parties’ Conditional Agreement for Discipline and the accompanying affidavit signed by Respondent. The Commission asserts this action is necessary and in the public interest, considering the contradictory public statements Respondent made immediately after this Court issued its Opinion imposing discipline. In support of this Verified Petition, the Commission submits the following:

1. On November 2, 2023 at 9:50 a.m., this Court issued its Per Curiam Opinion approving the parties’ conditional agreement, imposing a public reprimand, and ordering that Respondent pay \$250 in court costs plus the Commission’s investigation costs.
2. In the Opinion, the Court’s majority specifically noted, “In a sworn affidavit attached to the conditional agreement, made under penalty of perjury, Respondent admits these two rule violations [Ind. Prof. Cond. R. 3.6(a) and 4.4(a)] and acknowledges that he could not successfully defend himself on these two charges

if this matter were tried.” As mitigating factors, the Court recognized Respondent’s acceptance of responsibility, his cooperation with the disciplinary process, and his lack of prior discipline over a lengthy career. (Exh. A - Opinion, *Matter of Rokita*, cause no. 23S-DI-258, pp. 4-5).

3. Nearly two hours after the Court issued its Opinion, Respondent issued a press release titled “Attorney General Todd Rokita’s Statement on Disciplinary Commission Resolution.” (Exh. B – Attorney General Press Release, dated 11/2/23; Exh. D – Affidavit of Greg Anderson, OJAR Deputy Director of Administration). To date, that press release is still displayed on the Attorney General Office’s webpage. (Exh. C – Indiana Attorney General webpage at www.in.gov/attorneygeneral/newsroom/; Exh. D – Affidavit of Anderson).
4. Respondent opened the press release by indicating, “First things first: I deny and was not found to have violated anyone’s confidentiality or any laws.¹ I was not fined. And I will continue as Indiana’s duly-elected attorney general.” (Exh. B – AG Press Release, ¶1).
5. Among other statements in the press release, Respondent indicated the following:

Despite the failed attempt to derail our work. . . it all boiled down to a truthful 16-word answer I gave a year ago during an international media storm. . . I received a ‘public reprimand’ for saying that “. . . we have this abortion activist acting as a doctor – with a history of failing to report.” (Exh. B, ¶2).

¹ All attorneys in Indiana are required to comply with the Indiana Rules of Professional Conduct. Respondent’s statement that he was “not found to have violated. . . any laws” created ambiguity as to whether he was admitting to any misconduct, as can be seen in Exh. AA (11/3/23 Clarification in *The Bloomingtonian* to 11/2/23 article titled “Indiana Attorney General Attorney Todd Rokita Issues Defiant Statement Following Censure; Blames the Media, Medical Establishment, and ‘Cancel Culture’”). *The Bloomingtonian* issued “minor corrections” to its original article, after receiving an email from the Attorney General’s press office explaining Respondent’s interpretation of the phrase “I deny and was not found to have violated anyone’s confidentiality or any laws.”

6. Respondent further remarked in the press release:

Having evidence and explanation for everything I said, I could have fought over those 16 words, but ending their campaign now will save a lot of taxpayer money and distraction . . . In order to resolve this, I was required to sign an affidavit without any modifications. (Exh. B, ¶5).

7. Immediately following the issuance of Respondent's press release, media outlets published articles that cited to or referenced this release. (*See* Exhs. F - II).

- a. After citing remarks in Respondent's press release, some commentators expressed confusion as to the extent of Respondent's reprimanded conduct.

(*See, e.g.* Exh. Q – "It's not clear whether the opinion chastising Rokita was limited to his claim that Bernard had a 'history of failing to report' instances of abuse.")

- b. In many articles, questions were raised about the inconsistency between the statements in Respondent's press release and the signed affidavit referenced in the Court's opinion. (*See* Exhs. G, H, I, K, N, T, V, W, Z, CC, GG).

- c. Other accounts challenged Respondent's acceptance of responsibility (listed as a mitigating factor in the Court's opinion) in light of the statements in Respondent's press release. (*See* Exhs. G, H, I, K, N, P, CC, DD, FF, GG, HH, and II).

8. After the issuance of Respondent's press release, the Commission's staff and the Court's Public Information Officer received multiple requests from the media and private citizens for copies of the Conditional Agreement and accompanying affidavit. (Exh. D – Affidavit of Anderson).

9. Because conditional agreements are confidential pursuant to Admission and Discipline Rule 23, Section 22(a)(5), those interested in receiving a copy of the

Conditional Agreement and accompanying affidavit were informed that copies were not available for public inspection due to court rule. (Exh. D – Affidavit of Anderson).

10. Indiana Access to Court Records Rule 9 allows for a court to make a court record that is otherwise excluded from public access accessible under certain conditions.
11. One avenue is if “[e]ach person affected by the release of the Court Record waives confidentiality by intentionally releasing such Court Record for Public Access pursuant to 8(A).” A.C.R. 9(A). The Commission reached out to Respondent, by counsel, on November 20, 2023 to see if Respondent would agree to waive confidentiality and make the Conditional Agreement and accompanying affidavit publicly accessible in the case’s official court record.
12. Although the Commission had discussions with Respondent, through counsel, about voluntarily releasing for public access the Conditional Agreement and accompanying affidavit, those negotiations came to an impasse.
13. Nonetheless, Indiana Access to Court Records Rule 9(B) allows a court having jurisdiction over the court record to make publicly accessible a court record that is otherwise confidential if four conditions are met:
 - a. First, a verified written request must be filed that demonstrates at least one of the following:
 - i. Extraordinary circumstances exist requiring deviation from the general provisions of the Access to Court Records Rules;
 - ii. The public interest will be served by allowing access;
 - iii. Access or dissemination of the court record creates no significant

risk of substantial harm to any party, to third parties, or to the general public;

iv. Release of the court record creates no significant risk of substantial harm to any party, third persons, or the general public;

v. Release of the court record creates no prejudicial effort to ongoing proceedings; or

vi. The court record was incorrectly excluded from public access.

b. Second, all parties and other potentially affected persons receive notice of the verified petition and are given twenty (20) days after receiving notice to respond to the request.

c. Third, if the court considers the petition to have merit, the court holds a public hearing with advance notice.

d. Fourth, the court issues a written order after the hearing that sets forth the reasons for granting the request, finds that the requestor has demonstrated by clear and convincing that one of the requirements of Rule 9(B)(1) (*infra* ¶13a) is satisfied, and details the appropriate balancing of the public access/privacy interests of the Rule against the grounds demonstrated by the requestor.

14. Although there are generally important policy reasons for maintaining confidentiality of conditional agreements in attorney discipline cases, the Commission asserts that extraordinary circumstances exist in this case that require deviation from the confidentiality rule of Admission and Discipline Rule 23, Section 22. Further, the Commission believes that the public interest will best be

served by allowing public access to the Conditional Agreement and the accompanying affidavit signed by Respondent.

- a. Respondent's public statements in his press release, particularly his remark that he "was found not to have violated anyone's confidentiality or *any law*" (emphasis added) have created confusion as to whether Respondent admitted to any misconduct and the extent of the reprimanded misconduct. It is in the public's interest for members of the public and the media to be able to inspect the Conditional Agreement and accompanying affidavit to obtain a clearer account of what Respondent admitted to and the full extent of his reprimanded conduct.
- b. Additionally, because Respondent's public statements are inconsistent with what he agreed to in the Conditional Agreement and accompanying affidavit, he has created a great deal of public controversy with his remarks. It is in the public's interest to make the Conditional Agreement and accompanying affidavit available for public access so that interested individuals may inspect and evaluate the statements that Respondent agreed to and submitted to the Court and compare them with his recent public remarks.
- c. Further, this situation presents the type of extraordinary situation contemplated in Rule 9(B)(1) that requires deviation from customary confidentiality provisions. Respondent's public statements made immediately after the Court issued its Per Curiam Opinion and his widespread distribution of those statements by issuing a press release and

placing it on the Attorney General's website call into question Respondent's acceptance of responsibility for his misconduct. Respondent's actions flouted the authority of the Court, called into question the sincerity of Respondent's assertions to the Court in his Conditional Agreement and affidavit, and caused damage to the public's perception of the integrity and justness of the attorney discipline system. In such circumstances, the extraordinary measure of publicly releasing the Conditional Agreement and accompanying affidavit is necessary to restore public faith that lawyers cannot manipulate the discipline system to obtain a desired result and then counter with a public statement disavowing the acceptance of wrongdoing.

- d. Finally, permitting the release of the Conditional Agreement and accompanying affidavit to counter public statements by a public official who is under investigation or recently disciplined is consistent as a matter of policy with other disciplinary procedures in Indiana and other jurisdictions. (*See* Ind. Adm. Disc. R. 25 VIII(B)(1)(c); N.C. Jud. Stds. Comm. R. 6(3); Tenn. Bd. Jud. Cond. R. 0787-01.03(1); Rule 18-407(2) of the Maryland Court Rules).

WHEREFORE, pursuant to Indiana Access to Court Records Rule 9(B), the Executive Director of the Indiana Supreme Court Disciplinary Commission respectfully petitions the Indiana Supreme Court to order Respondent to respond within 20 days after service of this Petition. The Commission further requests the Court schedule a hearing for the Commission to demonstrate that extraordinary circumstances exist and that the public interest is best served by making the Conditional Agreement and Respondent's signed

accompanying affidavit publicly accessible and part of the official court record, and to provide any other relief that the Court deems necessary and appropriate.

12/11/23
Date

Adrienne L. Meiring
Adrienne L. Meiring, Atty. No. 18414-45
Executive Director
Indiana Supreme Court Disciplinary
Commission

12-11-23
Date

SKB
Stephanie K. Bibbs, Atty. No. 25145-49
Deputy Director of Litigation
Indiana Supreme Court Disciplinary
Commission

STATE OF INDIANA)
)
COUNTY OF MARION) SS:

Adrienne L. Meiring, being duly sworn upon her oath, deposes and says that she is the Executive Director of the Indiana Supreme Court Disciplinary Commission appointed pursuant to Indiana Admission and Discipline Rule 23, Section VI(a); that she makes this affidavit as the Commission’s Executive Director, and that the facts set forth in the above and foregoing Verified Petition are true as she is informed and believes.

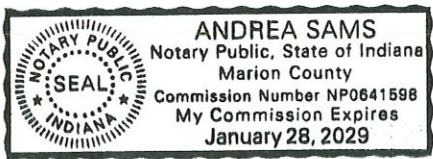


Adrienne L. Meiring

Subscribed and sworn to before me, a Notary Public, in and for said County and State, this 11th day of December, 2023.



Notary Public



CERTIFICATE OF SERVICE

I certify that a copy of the forgoing Disciplinary Complaint was served through the Indiana Court's e-filing system and by first class U.S. Mail, certified, return receipt requested, postage prepaid, this 11th day of December, 2023 upon:

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