

IN THE SUPREME COURT

OF THE

STATE OF INDIANA

IN THE MATTER OF

THEODORE E. ROKITA
Attorney No. 18857-49

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Cause Number 23S-DI-258

STATEMENT OF CIRCUMSTANCES

AND

CONDITIONAL AGREEMENT FOR DISCIPLINE

Pursuant to Indiana Admission and Discipline Rule 23, § 12.1(b), the Indiana Supreme Court Disciplinary Commission (“Commission”) and Respondent, Theodore E. Rokita (“Respondent”), having conditionally agreed upon the discipline to be imposed in this cause, submit the following:

STATEMENT OF CHARGES

In its Disciplinary Complaint under Cause Number 23S-DI-258, the Commission charged Respondent with violating the following rules:

Indiana Rule of Professional Conduct 3.6(a);

Indiana Rule of Professional Conduct 4.4(a);

Indiana Rule of Professional Conduct 8.4(d).

STATEMENT OF GENERAL FACTS

1. Respondent is currently an attorney in active and good standing in Indiana.
2. Respondent was admitted to practice law in the State of Indiana on October 23, 1995, subjecting him to the Indiana Supreme Court’s disciplinary jurisdiction.

3. At all times relevant to this proceeding, Respondent has been the Indiana Attorney General and has practiced law in Indianapolis, Marion County, Indiana.

4. Respondent has no prior discipline.

STATEMENT OF AGREED FACTS

1. On July 1, 2022, the *Indianapolis Star* published an article titled “Patients Head to Indiana for Abortion Services as Other States Restrict Care.” The story discussed an Indiana physician, Dr. Caitlin Bernard (“Dr. Bernard”), performing an abortion on a ten-year old from Ohio who was six weeks and three days pregnant and quoted Dr. Bernard in the article.

5. On July 2, 2022, Dr. Caitlin Bernard submitted a termination of pregnancy report to the Indiana Department of Health [“IDOH”], as required by Indiana Code § 16-34-2-5(b), after performing a termination of pregnancy procedure on a ten-year-old who had been referred to Dr. Bernard from a doctor in Ohio.

6. On the same date, Dr. Bernard emailed a copy of the termination report to the Indiana Department of Child Services [“IDCS”].

7. From July 8, 2022 through July 11, 2022, the Consumer Protection Division of the Indiana Attorney General’s Office received seven complaints regarding Dr. Bernard’s performance of a termination procedure on a ten-year old. None of the complainants were patients of Dr. Bernard.

8. On July 11, 2022, a staff member from the Indiana Attorney General’s Office requested from the IDOH all termination of pregnancy reports received in the previous thirty (30) days.

9. On July 12, 2022, the Indiana Attorney General’s Office notified Dr. Bernard that

it was opening an investigation into six complaints. The other submitted complaint was not deemed as having sufficient information to pursue an investigation.

10. Also, on July 12, 2022, staff members from the Indiana Attorney General's Office emailed the IDCS to find out whether a child abuse report had been filed regarding the ten-year old referenced in the July 1, 2022 *Indianapolis Star* article.

11. On July 13, 2022, Respondent sent a letter to Governor Eric J. Holcomb, requesting that the Governor direct IDCS and IDOH to turn over the records to the Attorney General's Office immediately.

12. Also, on July 13, 2022, Respondent appeared on the Jesse Watters show on Fox News.

13. During the show, Jesse Watters made the following statement:

Caitlin Bernard, the abortion doctor who performed the operation in Indiana, has a legal requirement to report the abortion to both child services and the state's health department. Because a ten-year-old isn't able to give consent and is therefore a rape victim. And from what we can find out so far, this Indiana abortion doctor has covered this up. Failure to report is nothing new, though, for Dr. Bernard. According to reporting from PJ Media, she has a history of failing to report child abuse cases. And our sources, as Trace mentions, are telling Fox that Dr. Bernard's employer, Indiana University Health, has already filed a HIPAA violation against her. So, is a criminal charge next? And, will Dr. Bernard lose her license?

14. Jesse Watters then remarked, "Let's ask the Indiana Attorney General, Todd Rokita. So what's going on, Todd?"

15. Respondent then replied with the following remarks at issue:

Jesse, thanks for having me on. But, I shouldn't be here, right.

Then we have the rape. And then we have this, uh, abortion activist acting as a doctor—with a history of failing to report. So, we're gathering the information. We're gathering the evidence as we speak, and we're

going to fight this to the end, uh, including looking at her licensure if she failed to report. In Indiana, it's a crime, uh, for, uh, to not report—uh, to intentionally not report.

AGREED VIOLATIONS AND CONCLUSIONS OF LAW

16. Indiana Rule of Professional Conduct 3.6(a) provides:

A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make any extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

17. Indiana Rule of Professional Conduct 3.6(d) provides:

A statement referred to in paragraph (a) will be rebuttably presumed to have a substantial likelihood of materially prejudicing an adjudicative proceeding when it refers to that proceeding and the statement is related to:

(1) The character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness. . . .

18. The parties agree that Respondent's use of the phrase "abortion activist acting as a doctor – with a history of failing to report" could reasonably be considered a statement about the doctor's character, credibility, or reputation in violation of Rule 3.6(a) because of the presumption raised by Rule 3.6(d)(1).

19. Accordingly, the parties agree that Respondent violated Rule 3.6(a), as described in Count 1 of the Complaint.

20. Indiana Rule of Professional Conduct 4.4(a) provides:

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such person.

21. The parties agree that a reasonable person could conclude that Respondent's use of the phrase "abortion activist acting as a doctor – with a history of failing to report" had "no

substantial purpose other than to embarrass or burden” the doctor in violation of Rule 4.4(a).

22. Accordingly, the parties agree that Respondent violated Rule 4.4(a), as described in Count 2 of the Complaint.

MATTERS IN DISPUTE

The parties dispute whether Respondent acted contrary to Ind. Code § 25-1-7-10(a) and violated Indiana Professional Rule 8.4(d). However, the parties agree that a trial on the merits on Count 3 would not likely result in a different sanction than the already agreed to proposed sanction on Counts 1 and 2. Accordingly, in the interests of judicial economy, the parties do not believe a trial on the merits is warranted on Count 3, and the Commission agrees to dismiss Count 3 in exchange for Respondent’s admission to misconduct on Counts 1 and 2.

SANCTION FACTORS

1. Respondent has no prior discipline. (ABA Standards for Imposing Lawyer Sanctions, § 9.32(a)).
2. Respondent has been cooperative and responsive to the Commission’s requests for information. (ABA Standards for Imposing Lawyer Sanctions, § 9.32(e)).
3. Respondent has accepted responsibility for his misconduct. (ABA Standards for Imposing Lawyer Sanctions, § 9.32(k)).
4. Respondent is a public official. He has been a government attorney and public official for 14 years. As such, he has substantial experience in the practice of law. (ABA Standards for Imposing Lawyer Sanctions, § 9.22(i)).

AGREED DISCIPLINE

Respondent and the Commission agree and respectfully suggest to the Court that the following discipline should be imposed:

Respondent should receive a **Public Reprimand** for violating Indiana Professional Conduct Rules 3.6(a) and 4.4(a), as described in Counts 1 and 2. The Commission will dismiss Count 3.

PRECEDENT

Several cases are relevant to the appropriate sanction in this matter. In *Matter of Brizzi*, 962 N.E.2d 1240 (Ind. 2012), the Supreme Court imposed a public reprimand on an elected prosecutor who violated Rules 3.6(a) and 3.8(f) by making statements to the media prior to trial about a defendant's character and that the defendant "deserve[d] the ultimate penalty for this crime" and "To do otherwise would be a travesty." Similarly, in *Matter of Litz*, 721 N.E.2d 258 (Ind. 1999), the Court imposed a public reprimand on a criminal defense attorney who violated Rule 3.6(a) by writing a letter to the editor, while the case was pending on retrial, claiming that his client was innocent and stating that his client had passed a lie detector test.

In the recent case of *Matter of Kyres*, 183 N.E.3d 299 (Ind. 2022), this Court accepted a conditional agreement to discipline of a public reprimand for an attorney's violation of Rule 4.4(a) when he opposed a protective order, in part, by accusing opposing counsel of having an affair with the police sergeant who investigated the matter and then later falsely claiming he "had a source" for the false allegation. Public reprimands also have been imposed for other Rule 4.4(a) violations. See *Matter of Campiti*, 937 N.E.2d 340 (Ind. 2009); *Matter of Edwards*, 894 N.E.2d 552 (Ind. 2008). In cases in which a more severe sanction was imposed, other significant factors that are not present here were involved. See, e.g. *Matter of Hall*, 108 N.E.3d 889 (Ind. 2018); *Matter of Richardson*, 792 N.E.2d 871 (Ind. 2003).

COMMISSION’S RIGHT TO WITHDRAW

The parties agree that until acceptance of this Conditional Agreement by the Indiana Supreme Court, the Commission may unilaterally withdraw from this Conditional Agreement upon notice to Respondent and to the Indiana Supreme Court of the Executive Director’s determination of a substantial change in circumstances with regard to Respondent, including but not limited to a previously unknown allegation that Respondent has engaged in misconduct.

STIPULATION AS TO COSTS

The parties have discussed the costs and expenses associated with *Matter of Theodore E. Rokita* and stipulate that the costs and expenses associated with the matter are as follows:

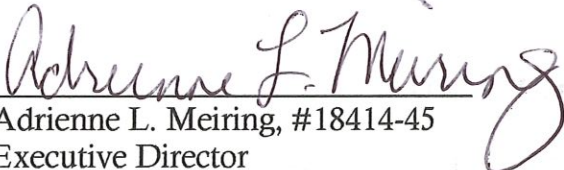
<u>Disciplinary Commission Expenses</u>	
Investigation/Litigation Expenses	\$ TBD
<u>Clerk of Supreme Court Expenses</u>	
Court Costs	\$ 250.00
<u>Hearing Officer Expenses</u>	
Hearing Officer Expenses	\$ 0.00
Total Due:	\$

VOLUNTARY CONSENT AND AFFIDAVIT

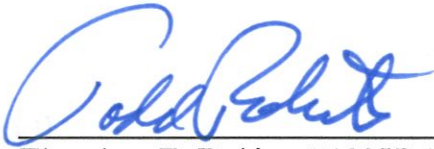
Respondent voluntarily consents to this Statement of Circumstances and Conditional Agreement for Discipline. In this regard, the parties incorporate by reference the attached Affidavit, drafted pursuant to Indiana Admission and Discipline Rule 23, § 12.1(b)(3).

WHEREFORE, Theodore E. Rokita and the Indiana Supreme Court Disciplinary Commission respectfully submit this Statement of Circumstances and Conditional Agreement for Discipline to the Indiana Supreme Court for its consideration and respectfully request that said Conditional Agreement be approved.


Respectfully submitted,




Adrienne L. Meiring, #18414-45
Executive Director



Theodore E. Rokita, #18857-49
Respondent



Stephanie K. Bibbs, #25145-49
Deputy Director of Litigation



H. Christopher Bartolomucci
Counsel for Respondent

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Stephanie K. Bibbs, Deputy of Director of Litigation
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251 North Illinois Street
Indianapolis, Indiana 46204

Gene C. Schaerr
H. Christopher Bartolomucci
Schaerr | Jaffe LLP
1717 K Street NW, Suite 900
Washington, DC 20006

AFFIDAVIT

I, Theodore E. Rokita, having been duly sworn upon my oath, depose and say under the penalties for perjury, that:

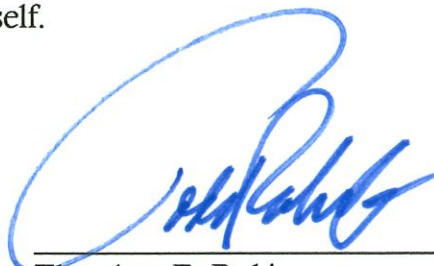
1. I consent, knowingly, freely, and voluntarily, to the agreed discipline that is set forth in a document entitled, "Statement of Circumstances and Conditional Agreement for Discipline," submitted in resolution of a certain disciplinary proceeding entitled, *In the Matter of Theodore E. Rokita*, Cause Number 23S-DI-258. I have entered into said agreement without being subject to any coercion or duress whatsoever, and I am fully aware of the implications of submitting my consent.

2. I am aware of a presently pending disciplinary proceeding involving allegations that there exist grounds for my discipline. The nature of said grounds is fully set forth in the document entitled, "Statement of Circumstances and Conditional Agreement for Discipline," which document is incorporated by reference as though fully set out herein.

3. I acknowledge that the material facts set out in the "Statement of Circumstances and Conditional Agreement for Discipline" are true.

4. I submit my agreement to discipline because I know that if this proceeding were prosecuted, I could not successfully defend myself.

Further, the affiant sayeth not.



Theodore E. Rokita
Respondent

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Subscribed and sworn to before me, a Notary Public in and for said County and State,
this 1st day of September, 2023.

Elizabeth Sutton
Notary Public (Signature)



Elizabeth Sutton
Notary Public (Printed)

My Commission Expires: November 29, 2030

My County of Residence: Owen