

IN THE
SUPREME COURT OF THE
STATE OF INDIANA

IN THE MATTER OF)
) CAUSE NO. 24S-DI-00250
RANDY GODSHALK)
Attorney No. 15176-64)

**RESPONDENT'S MEMORANDUM IN SUPPORT OF
VERIFIED AMENDED ANSWER TO THE DISCIPLINARY COMMISSION'S
AMENDED VERIFIED PETITION FOR EMERGENCY INTERIM SUSPENSION
AND REQUEST THAT PETITION BE DENIED BECAUSE RESPONDENT POSES
NO THREAT**

**I.
Introduction**

The alleged misconduct outlined in the Disciplinary Commission's Amended Verified Petition for Emergency Interim Suspension ("Petition") took place in 2008 and involved Randy Godshalk's representation of Ronnie Major, [REDACTED]

[REDACTED]

[REDACTED] Despite the passage of time, Mr. Godshalk has only been disciplined one time in his 34 year career and that discipline arose out of his representation of Mr. Major. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The alleged misconduct took place over 16 years ago and there is no emergency.

Mr. Godshalk has the right to due process of law (which includes the right to be heard) and should receive the benefit of the procedural due process outlined in Indiana Admission and Discipline Rule 23 to defend himself and present all circumstances surrounding this matter to a hearing officer in a traditional disciplinary proceeding. *In re Hefron*, 771 N.E.2d 1157, 1159 (Ind. 2002); *see also In re Ruffalo*, 390 U.S. 544, 550, 88 S. Ct. 1222, 1226, 20 L. Ed. 2d 117 (1968). In the past, this Court has granted Petitions for Emergency Interim Suspensions where an attorney has engaged in multiple instances of misconduct, usually involving the theft of client funds. No such on-going danger to clients exists in this matter.

The alleged misconduct arose out of unique circumstances unlikely to recur, and Mr. Godshalk poses no substantial threat of harm to the public, clients, potential clients, or the administration of justice. For these reasons, Mr. Godshalk respectfully requests that this Court deny the Commission's Petition. Ind. Admission & Discipline Rule 23(11.1)(b)(6)(ii). In the alternative, Mr. Godshalk requests that this Court, "[r]efer this matter to a hearing officer." Admis. Disc. R. 23(11.1)(b)(6)(iii).

II. Facts

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

██████ This is not a case involving persistent, wide-ranging, or on-going misconduct that creates a substantial threat of harm to anyone or any entity.

III.

Law Governing Emergency Petitions

A. Due Process of Law

In disciplinary proceedings, attorneys have the right to due process of law and that right requires that an attorney be provided an opportunity to be heard. In *Ruffalo*, the United States Supreme Court noted that attorneys in disciplinary proceedings are entitled to procedural due process. *In re Ruffalo*, 390 U.S. 544, 550, 88 S. Ct. 1222, 1226, 20 L. Ed. 2d 117 (1968)(internal citations omitted). Consistent with that precedent, this Court has held that “[d]ue process, as applied to disciplinary proceedings involving attorneys, requires notice of the charges and an opportunity to be heard.” *Matter of Wireman*, 270 Ind. 344, 348, 367 N.E.2d 1368, 1370 (1977); *see also In re Hefron*, 771 N.E.2d 1157, 1159 (Ind. 2002) (In an attorney disciplinary matter, due process requires notice and an opportunity to be heard in a “fundamentally fair proceeding.”). Because Mr. Godshalk has the right to procedural due process in an attorney disciplinary matter and because of the unique facts presented, Mr. Godshalk should be granted the opportunity to be heard.

B. Ind. Admission and Discipline Rule 23, Section 11.1(b)

Upon receipt of the answer, Indiana Admission and Discipline Rule 23(11.1)(b)(6) allows this Court to deny the petition, order an interim suspension, or refer the matter to a hearing officer. In order to grant the “extraordinary relief” the Commission requested

in its Petition, this Court must find that “[t]he continuation of the practice of law by the respondent during the pendency of a disciplinary investigation or proceeding may pose a substantial threat of harm to the public, clients, potential clients, or the administration of justice;” and that the “conduct would subject the respondent to discipline under this Rule.” Admis. Disc. R. (11.1)(b)(9).

Because the alleged misconduct in this matter took place 16 years ago and Mr. Godshalk has had no formal disciplinary history outside of his representation of Mr. Major, there is no emergency and Mr. Godshalk does not pose a danger of any kind. Therefore, the Commission’s Petition should be denied. In the alternative, because of the unique circumstances surrounding this matter and the due process concerns at issue, this Court should refer this matter to a hearing officer.

C. Precedent and Analysis

Counsel has found three recent matters in which this Court granted petitions for emergency interim suspensions. However, those matters are distinguishable from the Godshalk matter.

In one of those cases, respondent filed a response to the petition “conceding an interim suspension is warranted.” *Matter of Gupta*, 123 N.E.3d 696 (Ind. 2019). Nevertheless, according to the final disciplinary decision, the misconduct in *Gupta* was “wide-ranging” and “long-lasting” and the misconduct involved unjustly enriching the

respondent “at the expense of his clients and the public.” *Matter of Gupta*, 140 N.E.3d 287, 290 (Ind. 2020).

The *Matter of Steele* and the *Matter of Lewis* also resulted in interim suspensions. *Matter of Steele*, 39 N.E.3d 685 (Ind. 2015); *Matter of Lewis*, 93 N.E.3d 743 (Ind. 2018). According to the final disciplinary decisions in these matters, there were multiple acts of misconduct. Specifically, Steele’s misconduct included \$150,000 in theft of client funds and Lewis’ misconduct included conversion of client funds. *Matter of Steele*, 45 N.E.3d 777, 781 (Ind. 2015); *Matter of Lewis*, 113 N.E.3d 608 (Ind. 2018).

On the other hand, Mr. Godshalk’s alleged misconduct was neither wide-ranging nor long-lasting. [REDACTED]

[REDACTED] In 34 years of practice, Mr. Godshalk’s only disciplinary history stemmed from his representation of Mr. Major. Given the circumstances present in this matter, this alleged 2008 misconduct does not provide a sufficient basis for a finding that Mr. Godshalk presents a substantial threat of harm to the public, clients, potential clients, or the administration of justice. Accordingly, no emergency interim suspension is warranted.

IV.
Conclusion

Attorney Randy Godshalk has practiced law in Indiana for 34 years and does not pose a substantial threat of harm to the public, clients, potential clients, or the administration of justice. The alleged misconduct outlined in the Disciplinary Commission's Amended Verified Petition for Emergency Interim Suspension took place 16 years ago and the only discipline Mr. Godshalk has received in his career arose from his representation of Mr. Major, [REDACTED]
[REDACTED]

In this matter, there is no theft of client funds and no wide-ranging or long-lasting misconduct. There is no emergency in this matter and no evidence of an on-going danger to the public, clients, potential clients, or the administration of justice. Therefore, the Commission's Amended Petition should be denied. In the alternative, this matter should be referred to a hearing officer so due process of law can be achieved and these unique facts regarding a justifiable fear of a client can be heard.

Respectfully submitted,

/s/ James J. Bell

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing document using the Indiana E-filing System (IEFS) and that the foregoing document was served upon all counsel of record via IEFS on September 3, 2024.

/s/James J. Bell
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