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19S-DI-00156

IN THE SUPREME COURT

OF THE

STATE OF INDIANA

IN THE MATTER OF:	)	
	) SS:	CAUSE NO. 22S00-1503-DI-135
CURTIS T. HILL, JR.	)	

RESPONDENT'S OBJECTION TO THE DISCIPLINARY COMMISSION'S ITEMIZED STATEMENT OF EXPENSES

Comes now the Respondent, Curtis T. Hill, Jr., by counsel, and objects to the Commission's Itemized Statement of Expenses Allocable to the Matter of Curtis T. Hill, Jr., filed on September 28, 2020. On September 29, 2020, the Court entered an Order giving the Respondent twenty days to file a response. This response is timely. In support of his Objection, the Respondent states:

1. This case began on March 19, 2019, when the Disciplinary Commission filed a one-count Disciplinary Complaint against the Respondent. The Complaint alleged violations of three Supreme Court rules: (1) Rule 8.4(b) of the Rules of Professional Conduct, (2) Rule 8.4(d) of the Rules of Professional Conduct, and (3) Admission and Discipline Rule 22.

2. After a trial on the merits, the Hearing Officer concluded that the Commission had prevailed on the Commission's allegation that the Respondent violated Rules of Professional Conduct 8.4(b) and 8.4(d), but that the Respondent did not violate Admission and Discipline Rule 22.

3. The Commission took the position after the hearing that the Hearing Officer should recommend to the Court a sanction of a two-year suspension without automatic reinstatement. *See* Disciplinary Commission's Brief in Support of Its Proposed Hearing Officer's Report and Brief Regarding Sanction, filed on December 16, 2019. In counsel's

experience, the addition of nonautomatic reinstatement to a suspension adds approximately a year to the length of a suspension, assuming a petition for reinstatement is successful. *See, e.g., Matter of Johnson*, No. 01S00-1604-DI-188 (Petition for Reinstatement filed June 28, 2018; order granting reinstatement issued May 28, 2019). The effect of the Commission's recommendation, had it been accepted, would have been a suspension of the Respondent's law license for a minimum of approximately three years.

4. On the issue of appropriate sanction, the Hearing Officer chose to make a recommendation and recommended a suspension for sixty days without automatic reinstatement. Had the Hearing Officer's recommendation been followed by the Court, the Respondent's law license would have been suspended for a minimum of one year.

5. The Respondent filed a petition for review. The Respondent's Petition for Review also opposed the Hearing Officer's recommended sanction. Respondent's Brief in Support of Petition for Review at 43.

6. The Commission did not seek review of the Hearing Officer's conclusion that the Respondent did not violate Admission and Discipline Rule 22. The Commission filed a brief limited to the issue of the appropriate sanction. After having recommended to the Hearing Officer a sanction of a two-year suspension without automatic reinstatement, the Commission urged the Court to suspend the Respondent's law license for a "lengthy" period of time without automatic reinstatement. Disciplinary Commission's Brief Regarding Sanction at 12.

7. In response to the Commission's sanction position, the Respondent argued in the alternative to a finding of no professional misconduct that the appropriate sanction if one were to be entered would be a private reprimand. *See* Response to Commission's Brief Regarding Sanction at 15.

8. On May 11, 2020, the Court issued its final order of discipline in the form of a *per curiam* opinion. *Matter of Hill*, 44 NE.3d 184 (Ind. 2020). Because the Court's review is *de novo*, even in the absence of a Commission petition for review, it could have found that the Respondent violated Admission and Discipline Rule 22. It did not; it found in favor of the Respondent on that charge. *Id.* at 197. The Court accepted the Hearing Officer's recommendation that the Respondent violated Rules of Professional Conduct 8.4(b) and 8.4(d). *Id.* On the critical question of the appropriate sanction, the Court ordered the Respondent's law license suspended for thirty day with automatic reinstatement. *Id.*

THE COMMISSION'S EXPENSES

The Commission seeks an order reimbursing it for its expenses in the amount of $8,212.97. The back-up documentation for that claim is attached as Exhibit A, with sequential Bates pages numbers added in the format: "DC 000X."

- The Commission seeks $1,017.01 in expenses related to the attendance of a Commission witness, Allison Lukas. Ms. Lukas testified on October 22, 2019. Trial transcript, vol. 2 at 104. This includes an expense item of $248.98 described as follows: "October 20, 2019, Hotel for Pruden, Prep." Ex. A at DC 006. This appears to have been the charge for a room at the Hyatt Place Hotel near the Indianapolis Airport on two days or nights, October 20 and 21, 2019. Ex. A at DC 008. Ms. Lukas, however, was housed from October 20-21 at the Hyatt Regency Hotel in downtown Indianapolis. Ex. A at DC 007. The Disciplinary Commission office is at 251 N. Illinois in downtown Indianapolis. It is unclear why the Commission would have used a room at a hotel near the airport on two days when the witness was staying downtown and could readily have been prepared for her testimony at the Commission's

office. $248.98 of the Commission's expenses should not be charged to the Respondent.

THE HEARING OFFICER'S EXPENSES

The Commission seeks an order reimbursing the Court for the Hearing Officer's charges in the amount of $48,742.64. The back-up documentation for that claim is attached as Exhibit B, with sequential Bates page numbers added in the format: "HO 000X." The Hearing Officers charges consisted of $46,425.00 in professional services and $2,317.64 in disbursements. Ex. B at HO 001.

- On July 25, 2019, the Indiana Inspector General filed a Motion to Quash a subpoena issued by the Respondent to the Office of Inspector General. After briefing, on August 23, 2019, the Hearing Officer found that the Respondent had made a showing of need and ordered the Office of Inspector General to produce the subpoenaed documents. The Hearing Officer charged substantial time to the Inspector General subpoena.

  7/22/2019 ..... 1.00 hr.
  7/24/2019 ..... 1.40 hr.
  7/25/2020 ..... 1.00 hr.
  8/3/2019 ..... 0.60 hr.
  8/5/2019 ..... 3.30 hr.
  8/6/2020 ..... 2.30 hr.
  8/22/2019 ..... 4.50 hr.
  TOTAL.....14.10 hr.

  The Respondent should not be charged for the Hearing Officer's expenses related to the Inspector General's non-meritorious challenge to the Respondent's subpoena.

- Andrew Straw, a suspended Indiana attorney, sought to interject himself in this case by tendering various documents for filing. Those documents were never docketed. On August 19, 2019, the Respondent file a Motion to Refuse and Strike Andrew Straw Motion. On August 21, 2019, the Hearing Officer entered an order

denying and striking papers tendered by Straw construed as a motion to intervene and ordering the Clerk to reject for filing any other submissions by Straw.

8/16/2019 ..... 2.20 hr.
8/18/2019 ..... 0.80 hr.
8/19/2019 ..... 0.40 hr.
TOTAL.....3.40 hr.

The Respondent should not be charged for the Hearing Officer's expenses related to Straw's failed efforts to interject himself into the case.

- The Hearing Officer or a related Ice Miller lawyer devoted time to the Admission and Discipline Rule 22 (offensive personality) issue:

10/22/2019 ..... 1.10 hr.
10/23/2019 ..... 0.40 hr.
2/5/2020 ..... 1.90 hr.
TOTAL.....3.40 hr.

The Respondent should not be charged for the Hearing Officer's expenses directly related to an issue on which the Commission did not prevail before the Hearing Officer or the Court.

- The Hearing Officer billed consulting time between herself and an Ice Miller associate, Ellen Pactor:

10/04/2019 (Pactor) ..... 0.30 hr.
10/16/2019 (Pactor) ..... 2.00 hr.
12/18/2019 (Pactor) ..... 0.80 hr.
12/23/2019 (Pactor) ..... 1.00 hr.
1/14/2020 (Pactor) ..... 1.20 hr.
1/17/2020 (Pactor) ..... 0.10 hr.
TOTAL .....5.40 hr.

The Court's appointment of the Hearing Officer was a personal appointment. It was not an appointment of her law firm. The Respondent objects to taxing costs to the Respondent for time in consultation between the Hearing Officer and her associate,

none of which would have been necessary had the Hearing Officer done all of the work.

- The Hearing Officer's jurisdiction over the case ended when she issued her report to the Court. Hearing Officer time should not be taxed to the Respondent for time she spent reviewing the Court's final decision in the case. Accordingly, her charge of **0.50 hours on May 11, 2020** reviewing the Court's opinion should not be taxed to the Respondent.
- The Hearing Officer billed significant time to dealing with media matters:

5/14/2019	1.00 hr.
5/15/2020	1.00 hr.
5/16/2020	1.30 hr.
5/17/2020	1.40 hr.
5/24/2020	1.00 hr.
10/10/2020	1.00 hr.
10/11/2020 (Pactor)	1.10 hr.
1/16/2020	0.40 hr.
TOTAL	**8.20 hr.**

The Respondent did not turn this case into a media circus. The complaining witnesses and their counsel did. The Respondent should not be charged with Hearing Officer's costs of addressing media issues.

CONSIDERATIONS IN TAXING COSTS

9. The Commission's position on sanction in this case has consistently been extreme. The Commission advocated to the Hearing Officer that the Respondent's law license should be suspended for two years without automatic reinstatement—effectively a three-year suspension (assuming success on the first effort to seek reinstatement). It advocated to the Court that the Respondent's law license should be suspended for a "lengthy" period of time without automatic reinstatement—possibly meaning it urged the Court to issue a suspension of at least the length it advocated to the Hearing Officer.

10. The Court has a strong policy of "encourage[ing] appropriate agreed dispositions of disciplinary matters." Admis. Disc. R. 23(12.1)(b)(5). *See, e.g., Matter of Gupta*, 140 N.E.3d 287, 291 (Ind. 2020).

11. It is simply impossible to achieve an agreed resolution in a discipline case when the Commission's posture on sanction is so extreme. A Respondent finding himself in those circumstances faces a grim choice: acquiesce in the Commission's extreme position or contest the matter at a hearing. The Respondent chose the latter option and in doing so obtained a result that was 2.7% of the sanction urged by the Commission to the Hearing Officer.[1]

12. Moreover, the Commission failed to prevail before both the Hearing Officer and the Court on its disputed claim that the Respondent violated the oath of attorneys contained in Admission and Discipline Rule 22.

13. These factors should all be taken into account in the taxation of costs in this case. The expenses taxed to the Respondent should be discounted from those proposed in the Commission's itemized statement. For the foregoing reasons, after deducting certain expenses described in paragraphs above, the Court should reduce the remaining Commission and Hearing Officer expenses by two-thirds.

14. The Respondent's proposed allocation of Commission and Hearing Officer costs is shown on attached Exhibit C. According to the Respondent's calculations, the costs to be taxed against the Respondent should be $2,654.66 for Commission's expenses, $14,497.55 for the Hearing Officer, and $250.00 for the Clerk.

[1] The Commission's recommendation of a two-year suspension without automatic reinstatement would have resulted in a suspension of approximately 1,095 days (3 years times 365 days per year). The Court' sanction of a thirty-day suspension with automatic reinstatement was 2.74% of the Commission's recommended sanction.

WHEREFORE, the Respondent prays that the Court tax costs in the maximum amount of $2,654.66 payable to the Disciplinary Commission, $14,497.55 payable to the Court for Hearing Officer expenses, and $250.00 payable to the Clerk.

Respectfully submitted,

/s/ Donald R. Lundberg

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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October 2020, a copy of the foregoing was served via electronic service through the Indiana E-Filing System on:

Charles M. Kidd, Acting Executive Director
Seth T. Pruden, Staff Attorney
Angie Ordway, Staff Attorney
INDIANA SUPREME COURT DISCIPLINARY COMMISSION

/s/ Donald R. Lundberg
Donald R. Lundberg