



**TODD ROKITA**  
ATTORNEY GENERAL

Chief Justice Loretta H. Rush  
Justice Mark S. Massa  
Justice Geoffrey G. Slaughter  
Justice Christopher M. Goff  
Justice Derek R. Molter  
INDIANA SUPREME COURT  
State House, Room 315  
Indianapolis, IN 46204

Justin P. Forkner  
Chief Administrative Officer  
OFFICE OF JUDICIAL ADMINISTRATION  
251 N. Illinois Street, Suite 1600  
Indianapolis, IN 46204  
[justin.forkner@courts.in.gov](mailto:justin.forkner@courts.in.gov)

**Via Hand Delivery**

Chief Justice Rush, Associate Justices, and Mr. Forkner:

I am writing to address a matter of serious concern that affects all Hoosier attorneys who advocate for clients and causes which court staff, appointed commissioners and some political activists find anathema. Our nation has a long history of protecting public policy advocacy, but practicing law in this area has come under attack across the nation and in Indiana, particularly inside the Bar which you oversee.

Consistent with that tradition, as Attorney General, I propose rule amendments that are intended to protect the Disciplinary Commission of the Indiana Supreme Court from political weaponization. The Commission's willingness to entertain blatantly political and partisan grievances threatens the rule of law and freedom of speech upon which our government and profession depend. The impact of political lawfare on the operation of the Office of Attorney General raises concerns about the separation of powers through the judiciary's most powerful administrative and regulatory agency. The actions of the Commission concern every attorney and judge in the state.

I conclude that the Court is unaware of behavior that includes breach of confidentiality, investigations of grievances made without personal knowledge of misconduct, grievances concerning nothing more than speech, and Commissioners endorsing political candidates and viewpoints against the attorney being investigated. I reach this conclusion because, like most Hoosiers, I believe the Supreme Court would rein in its agents at the Commission because they would be found to be in violation of judicial ethics rules, if such rules applied to them.

Specifically, as detailed below, the Commission's procedures and practices allow Commissioners to conduct what appears to be biased decision-making while chilling the protected speech of those it regulates. Investigations and proceedings that do not present as impartial not only affect attorneys who are elected officials and candidates, but all attorneys. Investigations and proceedings that lack the appearance of impartiality simultaneously serve to chill the protected

speech of all licensed professionals who practice under the Supreme Court’s regulatory framework. To restore trust in the Commission, revisions to the rules are needed. As Chief Justice Rush said recently,

“My concern would be if you take one issue and say, ‘We’re going to send a message on this one issue, and not [look] at the body of work,’” Rush told reporters Tuesday. “I worry about our branch of government becoming political and judges saying, ‘Which way are the political winds going on a case?’ to make a decision. And I’ve seen that in other states.”<sup>1</sup>

Working together, I am sure we can make Indiana a model of professionalism instead of passively following the national trend of weaponized disciplinary proceedings.

### ***The Commission’s Current Procedures and Practices Undermine Public Trust***

The Commission’s current procedures and practices allow the disclosure of confidential information, where such confidentiality is necessary to sound self-policing of the profession. Similarly, the Commission entertains purely political and partisan grievances made by attorneys without any personal knowledge, which is done for the purpose of chilling the protected speech of candidates and office holders who are carrying out their duties or otherwise executing the discretion given to them by voters and taxpayers. For example, I and my office are aware that the Commission has:

- apparently negligently or intentionally leaked confidential information to the press, which has contacted the Attorney General’s Office about discovery matters that should not be publicly known and a miscellaneous Order that did not identify the lawyer under investigation;
- allowed attorneys, who are subject to the Rules of Professional Conduct and the Rules of Admission and Discipline, to publish and speak publicly<sup>2</sup> about investigations they initiated, allowing a one-sided and defamatory narrative to be propagated in the press for the purpose of influencing an election;
- taken and acted on political grievances from persons who have no personal knowledge of any facts relevant to the issue about which they complain;

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<sup>1</sup> Jarred Meeks, *Rush fears state supreme court could become political if individual rulings overshadow justice retention process*, STATE AFFAIRS (October 15, 2024), <https://pro.stateaffairs.com/in/justice-civil-rights/rush-supreme-court-retention>.

<sup>2</sup> Paula Cardoza-Jones, *Op-ed: Rokita is No Victim of a Leftist Witch Hunt*, THE INDIANA LAWYER (Jan. 17, 2024), <https://tinyurl.com/2bbdrwuu>; Paula Cardoza-Jones, *INBOX: Rokita Lied Under Oath; He Must be Suspended*, THE INDIANA LAWYER (Nov. 22, 2023), <https://tinyurl.com/58cw2adc>; Paula Cardoza-Jones, *Letter: The Curious Case of AG Rokita’s Disciplinary Action*, THE INDIANA LAWYER (Oct. 25, 2023), <https://tinyurl.com/95244ufx>; Paul Cardoza-Jones, *Cardoza-Jones: Ethical Questions Raised By the Conduct of Indiana AG Rokita*, THE INDIANA LAWYER (Sept. 28, 2022), <https://tinyurl.com/3zpdmjc3>.

- allowed its recent Chairman to publicly endorse and host a “Meet and Greet” for the political opponent of an elected legal officer (who the Commission is investigating at the behest of allies of the legal officer’s opposing political party), causing an appearance of impropriety; indeed, the candidate’s request for donations mentioned the Chairman and the need to “restore ethical standards in the Attorney General’s office”;<sup>3</sup>
- allowed the Chairman and other Commissioners to publicly raise money for the political opponent of an elected legal officer and candidate for elected public office while the Commission was investigating the legal officer merely for exercising protected speech;
- allowed its current Chairman to publish losing legal opinions in the popular press<sup>4</sup> contrary to the winning legal positions of Indiana’s chief legal officer in the Supreme Court of the United States,<sup>5</sup> and to make political endorsements of the legal officer’s political opposition, causing an appearance of impropriety; and
- allowed a Commission staff member to publish in her official capacity thinly veiled disciplinary threats to judges and practitioners who fail to abide by leftist Diversity, Equity and Inclusion policy beliefs and practices.<sup>6</sup> At the heart of DEI is the unfounded, unscientific belief that one can be guilty of racism and other vile prejudice even if one does not know it or does anything to indicate one actually harbors such indefensible attitudes.<sup>7</sup> It fosters a victim mentality. And while everyone has the right to their own opinions, an unelected agent of this Court—who oversees filing complaints against judges and practitioners—should not be opining in her official capacity that failure to embrace certain policy views could be grounds for attorney discipline. Doing so causes an

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<sup>3</sup> Exhibit 1, Hobart Democratic Precinct Organization, FACEBOOK (May 6, 2024) (announcing endorsement of Democratic AG candidate Destiny Wells by Bernard Carter), <https://tinyurl.com/44ekhwxs>; Exhibit 2, Hobart Democratic Precinct Organization, FACEBOOK (Mar. 27, 2024) (announcing Meet and Greet for Democratic AG candidate Destiny Wells with “special host” Bernard Carter), <https://tinyurl.com/433scuu8>; Exhibit 3, Donate to Wells for Indiana.

<sup>4</sup> Marilyn Groppe, *Pence friend explains why he's part of an anti-Trump group criticizing the vice president*, INDYSTAR (Sept. 19, 2019), <https://www.indystar.com/story/news/politics/2019/09/19/pence-friend-explains-why-hes-part-anti-trump-group-criticizing-pence/2374812001/>; See, also, Republicans for the Rule of Law, *Presidential Accountability Project*, <https://www.ruleoflawrepublicans.com/oversight/>.

<sup>5</sup> Wendell L. Willkie II & Peter J. Rusthoven, *The Case for Disqualifying Trump*, REAL CLEAR POLITICS (February 6, 2024), [https://www.realclearpolitics.com/2024/02/06/the\\_case\\_for\\_disqualifying\\_trump\\_617386.html](https://www.realclearpolitics.com/2024/02/06/the_case_for_disqualifying_trump_617386.html).

<sup>6</sup> See Adrienne Meiring, *The Impact of Bias* 67 RES GESTAE: IND. STATE BAR ASS’N MEMBER J. 30 (2023), <https://tinyurl.com/2ps5uf26>; Adrienne Meiring, *The Good, the Bad, and the Disappointing* IND. COURT TIMES (2021), <https://tinyurl.com/bdfhbc4x>.

<sup>7</sup> Heather MacDonald, *Are We All Unconscious Racists?* CITY JOURNAL (2017), <https://tinyurl.com/ym65t37c>.

appearance of impropriety for the public and any attorney who might be under investigation.

The grievances the Commission has been considering have several things in common. Among them, they each:

- have been initiated by *attorneys* who lack any personal knowledge of the alleged offending conduct;
- concern the policy and political speech of an attorney;
- are made by *attorneys* with opposing policy and political views; and
- are designed to prevent or hinder zealous advocacy by the legal officer on matters of public policy that the grievants oppose.

For example, one serial grievant has been suing me (unsuccessfully) in my official capacity for decades regarding various policies I have designed and/or implemented. He publicly holds himself out as the winner of the Indiana Democratic Party's 2018 Activist of the Year Award. The Commission then allows its process to be weaponized by communicating its investigative measures to the grievants, who then leak those communications to the press. Political opponents use this presumptively confidential information in false, defamatory political advertising and one-sided statements without the fairness of dialogue by the attorney under investigation all of this acts to sway the results of an election and damage the reputation of the attorney being investigated. It is beneath this Court to engage in such activity, but it is exactly what agents of this Court are doing or allowing to happen.

The Commission's decisions to entertain these partisan attacks—in a way that allows them to be publicized in the press and used repeatedly by an elected legal officer's political opponents as if the investigation was a finding by the Commission—are exacerbated by Commissioners' own partisan advocacy when espousing and promoting policy positions contrary to those of the lawyers they are investigating. Astonishingly, in my own case, the Commission's Chairman publicly endorsed my opponent in the general election at the same time the Commission provided her campaign talking points when a confidential investigation was leaked to the press.

As another example, the Commission's current chair authored an article in *Politico/Real Clear Politics* endorsing the removal of President Donald Trump from the ballot at the same time the Commission was investigating me for filing the state's *amicus* brief in the U.S. Supreme Court endorsing President Trump's position on that very issue. All nine Justices of the Supreme Court rejected the chairman's position, but it took the Commission longer to dismiss its investigation than it took the Supreme Court to write its opinion. Moreover, the current chair's endorsement of Kamala Harris for president this year<sup>8</sup> and financial support of her surrogates, Joe Biden and Liz Cheney, for thousands of dollars, further calls into doubt the chair's motives, given the use of his office to discourage attorneys from advocating for President Trump.<sup>9</sup> It not only chills the speech and actions of this legal officer, but every attorney who believes that a presidential candidates should not be removed from ballots by state courts.

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<sup>8</sup> Garrett Bergquist, *Trump 'manifestly unfit for office': Reagan alum explains Harris endorsement* WISHTV.COM (Aug. 30, 2024), <https://tinyurl.com/vhfzcd2e>.

<sup>9</sup> Exhibit 4, Rusthoven Donations to Democrat Candidates, including Joe Biden; *see also* Exhibit 5, Carter Donations to Democratic Candidates.

These practices and procedures undermine the effectiveness of the Commission and the credibility of this Court by calling into question its impartiality and presenting the appearance of bias and conflicts of interest.

**The Commission's Procedures and Practices Have Led to Politically Biased Investigations**

The Disciplinary Commission's procedures and practices have also allowed the appearance of political bias to infect the disciplinary process. The Commission has accepted and considered political, partisan grievances—and it has allowed those grievances and the subsequent investigations of them to be made public. Those grievances included the following complaints challenging official actions of an elected legal officer:

- sending a letter to a national chain store regarding its promotion of gender and sexual identity among children;
- filing an *amicus* brief in the U.S. Supreme Court in *Trump v. Anderson*;
- providing a formal advisory opinion to an Indiana state senator that corrected another agency's informal, incorrect opinion, where that agency did not seek the Attorney General office's legal counsel before publishing its faulty opinion;
- warning Fortune 500 companies that their DEI policies and practices could subject them to legal action in the wake of *Students for Fair Admissions v. President & Fellows of Harvard College*. (Many corporate law firms and businesses also recognized the same legal risks and shut down their racial preference programs. Despite the clear partisan nature of this grievance, the Commission allowed it to persist for almost one year, just one week shy of when it would have automatically been dismissed by operation of Indiana Rule of Attorney Admission & Discipline 23, § 10(h).) This had the effect of chilling the protected speech of a legal officer and otherwise referencing data in this area for a year.

Regarding me, partisan grievances were lodged just before the Commission's efforts to publicize the confidential Conditional Agreement and Affidavit I signed to resolve a grievance regarding a 16-word statement about a pro-abortion political activist. These grievances catalyzed<sup>10</sup> a rabid, falsely narrated press response that the Commission called "extraordinary" in its petition to unseal the Conditional Agreement and Affidavit. Although there are legal and policy reasons not to publish those documents, I agreed not to oppose publication because continued litigation over it was not in the public interest.

Two additional grievances filed by people with opposing viewpoints were eventually dismissed; however, their dismissal came after costly and disruptive investigations. It required time and resources to defend. These investigations became campaign fodder for my opponent<sup>11</sup>—who was formally endorsed by the Chairman of the Commission.

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<sup>11</sup>See, e.g., Paula Cardoza-Jones, *INBOX: Rokita Lied Under Oath; He Must be Suspended*, THE INDIANA LAWYER (Nov. 22, 2023).

<sup>12</sup>See, e.g., Democratic AGs, @DemocraticAGs, X (Aug. 14, 2024 3:50 PM), <https://tinyurl.com/5y2xr8j9> (using ethics charges in attack ad).

The Commission's actions are not isolated. They are representative of the weaponization of attorney discipline against attorneys in Indiana and across the country. Presently, this type of lawfare is being waged against conservative attorneys general, who litigate causes and represent clients that some consider unpopular or controversial. As one author recently put it, "[h]alf of Republican state attorneys general and many of their immediate predecessors have faced ethics challenges to their law licenses since 2022."<sup>12</sup> Apparently, a manual is even being utilized to facilitate the grievance filing process.<sup>13</sup>

Such efforts are not limited to public officials. Activists have organized to "not only bring the grievances in the bar complaints," against their political opponents, "but shame them and make them toxic in their communities and in their firms."<sup>14</sup> One member of such a group told the media, "I think the littler fish are probably more vulnerable to what we're doing. ... You're threatening their livelihood. And, you know, they've got reputations in their local communities."<sup>15</sup> Another activist stated that "[t]his is mostly important for the deterrent effect that it can bring so that you can kill the pool of available legal talent going forward."<sup>16</sup>

This weaponization of the attorney discipline process does not reflect well on our profession or this Court. And it does not reflect Hoosier principles.

### **Trust Can Be Restored Through Disciplinary Rule Amendments**

I hope and fully expect that these concerns can be resolved through the rulemaking process. Accordingly, I submit with this letter proposed rules that will begin to address and correct the Commission's policies and actions that are destroying the people's confidence in and respect for the legal system and its institutions.

The proposed rules include the common-sense clarification that the Supreme Court's agents in the Commission must follow the same rules of impartiality and recusal as the judiciary on whose behalf they act. Indiana Code of Judicial Conduct Rule 2.11 provides that a judge "shall disqualify himself or herself" when "the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions" listed apply. *Id.* cmt. 1. Yet multiple Commissioners have made numerous political contributions and statements while simultaneously investigating attorneys for advocating opposing political positions.

Judicial conduct rules require a judge to disqualify himself if he "has made a public statement ... that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy." *Id.* (A)(5). It destroys the appearance of

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<sup>13</sup> Joy Pullman, *Effective GOP Attorneys General Face Politicized Ethics Charges*, THE FEDERALIST (Feb. 5, 2024), <https://tinyurl.com/25shpmzc>.

<sup>14</sup> Joy Pullman, *Democrats Work to Strip All Opponents of Representation in Court*, THE FEDERALIST (Feb. 5, 2024), <https://tinyurl.com/3nc46drp>.

<sup>15</sup> Lachlan Markay & Jonathan Swan, *Scoop: High-powered group targets Trump lawyers' livelihoods* AXIOS (Mar. 7, 2022), <https://tinyurl.com/yc4mp9hf>.

<sup>16</sup>*Id.*

<sup>17</sup> *Id.*

impartiality if Commissioners publicly endorsed for election to public office the political opponent of an attorney it is investigating; this conduct cannot be allowed to continue.

Beyond these recusal requirements, the proposed rules also include the following clarifications, specifically that:

- political and policy speech as well as its associated advocacy are not grounds for discipline;
- speech in the course of performance in official capacity is immune;
- speech of deputies and staff in the course of performance in official capacity is immune;
- grievances must be based on personal knowledge;
- the Commission must not communicate ANY of its investigative measures to grievants until the end of the process, with exception only for discovery, and then subject to strict confidentiality;
- the Commission must include (or copy) an attorney under investigation on any subpoenas it issues; and
- grievants are immune from civil liability only for good-faith grievances.

In addition, conduct by some members and staff of the Disciplinary Commission that might stifle effective advocacy of political positions that those personnel oppose must be scrutinized by the public. Accordingly, I have proposed public reporting requirements for the Commission's expenditure of funds and staff time.

To address the specific problem of a Commission staff member advocating any other political or policy position in his or her official capacity, I ask the Court to prohibit the Commission and its employees or agents from attempting to impose DEI standards on judges and attorneys unless they receive clear direction from the legislature or the Supreme Court itself. The Commissioners cannot fairly investigate alleged misconduct on political matters while promoting partisan advocacy of its Commissioners and staff.

Finally, a new process is needed to allow attorneys to seek immediate dismissal of meritless grievances and resolution of constitutional questions. As mentioned, any disciplinary investigation, even if eventually dismissed, is burdensome in time and money. Accordingly, to protect all Hoosier attorneys, I have proposed a procedure that will allow attorneys to move for dismissal of ill-founded grievances before they impose crushing costs on the attorney being investigated.

As a matter of fairness to all Hoosiers and Hoosier attorneys, the Commission's partisan behavior must stop. And the rules I have proposed are an important first step.

Sincerely,



Todd Rokita  
Attorney General



Hobart Democratic Precinct Organization · Follow

May 6 · 🌐



Lake County Prosecutor Bernard Carter endorses [Destiny Wells](#) for Indiana Attorney General 2024.

Show your support for all the Democrats on the ballot with your vote - Voting takes place Election Day, Tuesday, May 7, 2024 from 6:00 a.m. to 6:00 p.m.

Visit [www.indianavoters.com](http://www.indianavoters.com) to look up your voting information and find your specific voting location details.



Destiny Wells

May 6 · 🌐

I am honored to receive the endorsement of Lake County's longtime prosecutor and leader, Bernie Carter. Thank you for leadership and service to the State, Prosec... [See more](#)



Hobart Democratic Precinct Organization • Follow



March 27 · 0

Save-the-Date for Wednesday, April 10 to meet [Destiny Wells](#), Democratic Candidate for Indiana Attorney General 2024.



# Meet and Greet

*with special hosts Hon. Bernard Carter and Matt Fech*



**Wednesday  
April 10, 2024  
5:00 - 6:30p  
Remarks at 5:45p**

*Innsbrook Country Club  
6701 W Tatt St  
Merrillville, IN*



**RSVP:**  
<https://secure.actblue.com/donate/wellslakecobar>

Paid for and Authorized by Wells for Indiana



Lake County Democratic Central Committee

March 27 · 0

Join hosts Prosecutor Bernard Carter and Matt Feeh for an evening of conversation at the Innsbrook Country Club, 6701 W Taft St Merrillville. IN.

Doors open at 5:00p and remarks will begin at 5:45p.

RSVP by using [this link](#) or to Kristen Self at 317.709.1228



Our campaign is not just about winning an election; it's about building a better future for Indiana. Together, we will protect medical privacy, champion workers' rights, and restore ethical standards in the Attorney General's office.

Thank you for being a part of this incredible journey. Let's get to work and shape a brighter future for Indiana, hand in hand.

If you wish to mail a contribution:

Wells for Indiana

P.O. Box 44161

Your contribution will benefit Destiny Wells.

\$100

\$250

\$1,000



**Make it monthly**

Yes, count me in!

No, donate once

**Checkout**

Have an ActBlue Express account? [Sign in to give faster.](#)

 Pay with card

Or







**Exhibit 3**

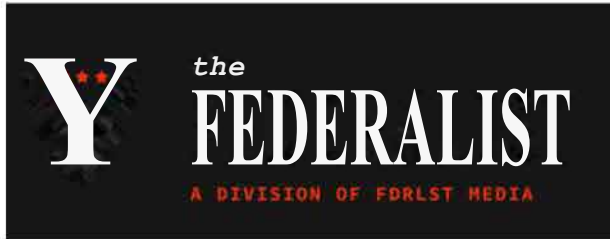


Exhibit 4

By: Joy Pullmann  
February 26, 2024

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The remaining commission member, Peter J. Rusthoven, is a longtime political donor to prominent in-state and national politicians and former associate counsel to President Ronald Reagan. Rusthoven donated \$2,900 to now-ousted Wyoming U.S. Rep. Liz Cheney in 2021, while she was championing the Jan. 6 commission to overcharge and imprison Democrats' political opponents.

Rusthoven also coauthored a Feb. 6, 2024, op-ed calling for the U.S. Supreme Court to deny Trump ballot access for "inciting an insurrection against the peaceful transfer of power." Trump has not been convicted of this crime in any court of law.

Rusthoven also supported Hale's 2020 campaign for U.S. House, with \$250, and gave Joe Eiden \$1,250 in 2020.

Money to Candidates	RUSTHOVEN, PETER ZIONSVILLE, 46077	SELF EMPLOYED	ATTORNEY	09-04-2020	\$250	Christina Hale (D)	Federal
Money to Candidates	RUSTHOVEN, PETER ZIONSVILLE, 46077	SELF-EMPLOYED	ATTORNEY, PARTNER	04-23-2020	\$1,000	Joe <b>B</b> (D)	Federal



## Exhibit 5

By: Joy Pullmann  
February 26, 2024

...

Disciplinary Commission Chairman Bernard Carter, a Lake County prosecutor, has been an elected Democrat official for more than 30 years. His donation records include numerous contributions to Democrats from him and his campaign fund.

Among those are \$200 in 2020 to the P-ro abortion Democrat candidate for Indiana governor, Woody Myers; several donations to his local state Rep. Vernon Smith, a Public SUP-P-Orter of critical race theorY.; and \$500 to Gary, Indiana Mayor Eddie Melton, who strongly. SUP-P-Orts the city's lawsuit that has forced gun manufacturers to disclose hundreds of thousands of customer names.

# Indiana Rules of Court

## Rules for Admission to the Bar and the Discipline of Attorneys

*Including Amendments Received Through July 1, 2024*  
[Find Admission & Discipline forms at courts.in.gov](https://courts.in.gov)

### **Rule 23. Disciplinary Commission and Proceedings**

#### **Table of Contents**

#### **I. Overview**

...

#### **Section 2. Grounds for Discipline or Suspension**

...

*(d) Political speech and advocacy*

*(e) Personal knowledge required...*

#### **II. The Disciplinary Commission and Bar Associations**

...

#### **Section 4.1. Reporting on Uses of Time and Funds**

*(a) Time and expenditures*

*(b) Public disclosure of time and expenditures*

#### **Section 8. Powers and Duties of the Disciplinary Commission**

*(a) Duties and powers*

*(b) Rules and regulations*

*(c) Judicial canons*

*(d) Need for legislative or judicial approval*

#### **Section 9. Powers and Duties of the Executive Director**

#### **III. Specific Procedures**

#### **Section 10. Investigatory Procedures**

...

*(h) Limitation on time and expenditures to complete investigation.*

*(i) Recusal*

...

#### **Section 14. Proceedings Before the Hearing Officer**

...

(f) *The hearing*

...

#### **IV. General Provisions**

...

##### **Section 22. Public Access**

...

(c) Disciplinary Commission communications with grievants

(d) Disclosure of non-public information.

...

##### **Section 25. Immunity**

(a) *Statements to the Disciplinary Commission or Lawyers Assistance Program*

(b) *Suit arising from performance of duties*

(c) No Immunity for disclosure of non-public information

...

#### **VI. Strategic Grievances.**

##### **Section 31. In General**

(a) Included conduct

##### **Section 32. Defense to Strategic Grievance**

(a) Proceedings stayed

##### **Section 33. Motion to Dismiss Strategic Grievance**

(a) Procedures

(b) Proceedings stayed

##### **Section 34. Attorney Fees**

(a) Attorney Fees

#### **I. Overview**

...

##### **Section 2. Grounds for Discipline or Suspension**

...

(d) Political speech and advocacy. The Disciplinary Commission shall not consider political speech or political advocacy as grounds for investigating a grievance or for rendering attorney discipline. The Commission shall dismiss any such grievances on its own accord within thirty (30) days. This rule does not extend to advocacy that has been determined vexatious by an Indiana court. For purposes of this subsection, "political speech or political advocacy" means "words or conduct intended to marshal public support for an issue, position, or candidate."

(e) Personal knowledge required. The Disciplinary Commission shall not consider a grievance unless it is based on the grievant's personal knowledge. If the Disciplinary Commission receives a grievance that is not based on personal knowledge but nevertheless indicates on its face that a third party may have knowledge of a violation of the Indiana Rules of Professional Conduct, the Disciplinary Commission may ask the third party if he or she desires to file a grievance.

...

## II. The Disciplinary Commission and Bar Associations

...

### Section 4.1. Reporting on Uses of Time and Funds

- (a) *Time and expenditures.* Not later than May 1 of each year, the Disciplinary Commission shall submit to the Supreme Court its funds expended and total time investigating and prosecuting each proceeding under this chapter. Each investigation or other proceeding shall be listed only by docket number.
- (b) *Public disclosure of time and expenditures.* The Supreme Court shall make public the Disciplinary Commission's annual approved operating budget under Section 4(d), as well as the Disciplinary Commission's time and expenditures under Section 4.1(a) by July 1 of each year.

### Section 8. Powers and Duties of the Disciplinary Commission

- (a) *Duties and powers.* In addition to the powers and duties set forth in this Rule, the Disciplinary Commission shall have the duty and power to:
  - (1) Appoint with the approval of the Supreme Court an Executive Director of the Disciplinary Commission who shall be a member of the Bar of this State and who shall serve at the pleasure of the Disciplinary Commission.
  - (2) Prepare and furnish a form of request for investigation to each person who claims that an attorney is guilty of misconduct and to each Bar Association in this State for distribution to these persons.
  - (3) Supervise the investigation of claims of misconduct.
  - (4) Issue subpoenas; the failure to obey the subpoena may be punished as contempt of the Supreme Court or, in the case of an attorney under investigation, shall subject the attorney to suspension under the procedures set forth in subsection 10.1(c) of this Rule. The Disciplinary Commission shall serve a copy of a third-party subpoena upon the attorney under investigation at least fifteen (15) days before serving it on the third party.
  - (5) Do all things necessary and proper to carry out its powers and duties under this Rule.
  - (6) Exercise the right to bring an action in the Supreme Court to enjoin or restrain the unauthorized practice of law.
  - (7) Make an annual report of its activities to the Supreme Court and the Indiana State Bar Association. The report shall include a statement of income and expenses for the year.
- (b) *Rules and regulations.* The Disciplinary Commission may propose rules and regulations for the efficient discharge of its power and duties. These rules and regulations shall become effective upon approval by a majority of the Supreme Court.
- (c) *Judicial canons.* The Disciplinary Commission and Executive Director operate under the direction of the Supreme Court and during their terms of service shall be bound by the Indiana Code of Judicial Conduct.

- (d) *Need for legislative or judicial approval.* The Disciplinary Commission and its agents, employees, and staff shall not impose diversity, equity, and inclusion standards on judges or attorneys without clear direction from the Supreme Court or the legislature.

### **Section 9. Powers and Duties of the Executive Director**

In addition to the powers and duties set forth in other Sections of this Rule, the Executive Director shall have the power and duty to:

- (a) Administer the Disciplinary Commission's work.
- (b) Appoint, with the approval of the Disciplinary Commission, staff as may be necessary to assist the Disciplinary Commission to carry out its powers and duties under this Rule.
- (c) Supervise and direct the work of the Disciplinary Commission's staff.
- (d) Appoint and assign duties to investigators.
- (e) Supervise the maintenance of the Disciplinary Commission's records.
- (f) Issue subpoenas in the name of the Disciplinary Commission. The failure to obey the subpoena shall be punished as a contempt of the Supreme Court or, in the case of an attorney under investigation, shall subject the attorney to suspension under the procedures set forth in subsection 10.1(c) of this Rule. The Executive Director shall serve a copy of a third-party subpoena upon the attorney under investigation at least fifteen (15) days before serving it on the third party.
- (g) Enforce the collection of the registration fee provided in Ind. Admission and Discipline Rule 2 against delinquent members of the Bar.
- (h) Notwithstanding the Public Access requirements set out in Section 22 of this Rule, cooperate with the attorney disciplinary enforcement agencies of other jurisdictions, including, upon written request, the release of any documents or records that are in the control of the Executive Director to the chief executive of an attorney disciplinary enforcement agency in any jurisdiction in which an Indiana attorney is also admitted.
- (i) In addition to the powers and duties set forth in other Sections of this Rule, the Executive Director shall have the power and duty to designate in writing an Acting Executive Director to act in the Executive Director's absence.
- (j) Do all things necessary and proper to carry out the Executive Director's duties and powers under this Rule.

## **III. Specific Procedures**

### **Section 10. Investigatory Procedures**

...

- (h) *Limitation on time and expenditures to complete investigation.* Unless the Supreme Court permits additional time, any investigation into a grievance shall be completed and action on the grievance shall be taken within twelve (12) months from the date the grievance is received (or the date a response is demanded to a Disciplinary Commission grievance). In no event shall the Disciplinary Commission spend more than 5% of its staff hours or funds expended under Section 4 on an individual investigation without advanced approval from the Supreme Court, unless that investigation involves allegations of criminal conduct. The purpose of the deadline and limitations is to enable the Supreme Court to promote a fair and efficient process and not to create substantive or procedural rights. Requests for additional time shall be submitted to the Supreme Court and shall briefly describe the circumstances necessitating the request. No response or objection shall be allowed. Delays caused by a respondent's noncooperation or requests for extensions of time, and periods during which the respondent is suspended from practice, shall not be counted toward the 12-month period. If the Disciplinary Commission does not file a Disciplinary Complaint within this time, the grievance shall be deemed dismissed.

(i) Recusal. A member of the Disciplinary Commission or staff shall recuse for any of the bases for disqualification found in Rule 2.11 of the Code of Judicial Conduct. An attorney under investigation may, on a showing of good cause, petition the Supreme Court for the recusal of a member of the Disciplinary Commission or staff within ten (10) days after receiving notice that cause for recusal exists.

...

#### **Section 14. Proceedings Before the Hearing Officer**

...

(f) *The hearing.*

- (1) Within thirty (30) days after the respondent has filed a timely answer or the hearing officer is appointed and has qualified, whichever is later, the hearing officer shall schedule a date for a final hearing on the Disciplinary Complaint and the respondent's answer. Absent good cause, the hearing date shall be within ninety (90) days of the scheduling order.
- (2) The grievant, the respondent, and the Disciplinary Commission shall be given not less than fifteen (15) days written notice of the hearing date.
- (3) The respondent shall have the right to attend the hearing in person, to be represented by counsel, to examine witnesses and to submit evidence and witnesses as in civil proceedings.
- (4) Only the Supreme Court and its duly appointed hearing officer or hearing officers shall have jurisdiction to issue any orders or processes in connection with a disciplinary case brought under this Rule.
- (5) Upon request, the hearing officer may issue a subpoena for the attendance of witnesses or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to the Disciplinary Commission or the respondent or the respondent's attorney, who shall fill it in before service. The respondent, or attorneys for the Disciplinary Commission and for the respondent, are authorized to sign and issue subpoenas. Subpoenas for the attendance of witnesses and production of documentary evidence shall conform to the provisions of Indiana Trial Rule 45. The hearing officer or officers shall have authority to enforce, quash or modify subpoenas for good cause. The party issuing the subpoena shall serve a copy of it upon the respondent investigation at least fifteen (15) days before serving it on the third party.
- (6) The hearing on the Disciplinary Complaint and the respondent's answer shall be conducted by the hearing officer on the record and without a jury.

...

#### **IV. General Provisions**

...

#### **Section 22. Public Access**

...

(c) Disciplinary Commission communications with grievants. The Disciplinary Commission's communication with a grievant about the existence or progress of an investigation shall be limited to (1) confirming that the grievance has been received by the Disciplinary Commission; (2) informing the grievant that the grievance has been dismissed as set out in Sections 10(a)(1), 10(g)(2), and 11(b) of this Rule; (3) informing the grievant about a hearing date as set out in Section 14(f)(2) of this Rule; and (4) requesting additional information from the grievant, if necessary. The respondent shall receive a contemporaneous copy of each such communication from the Disciplinary Commission.

(d) Disclosure of non-public information. Unless and until a Disciplinary Complaint has been filed with the Supreme Court, information about an investigation or potential investigation under this Rule is declared confidential and, however obtained, shall not be publicly disclosed by the Indiana Supreme Court or any of its agencies, or by an attorney bound by the Rules of Professional Conduct. No immunity shall attach for disclosure of such information in violation of this Section...

## **Section 25. Immunity**

- (a) Statements to the Disciplinary Commission or Lawyers Assistance Program. Each person shall be absolutely immune from civil suit for all of his or her oral or written statements in good faith intended for transmittal either: (1) to the Disciplinary Commission, the Executive Director, or the Disciplinary Commission staff, or made in the course of investigatory, hearing, or review proceedings under this Rule; or (2) to a Lawyers Assistance Program approved by the Supreme Court. Oral or written statements made to others which are not intended for such transmittal have no immunity under this Section.
- (b) Suit arising from performance of duties. The Executive Director, his or her staff, counsel, investigators, hearing officers, and the members of the Disciplinary Commission shall be immune from suit for any conduct arising out of the performance of their duties.
- (c) No Immunity for disclosure of non-public information. No immunity under this section shall attach for disclosure of confidential information as set out in Section 22(d).

...

## **VI. Strategic Grievances**

### **Section 31. In General**

- (a) Included conduct. As used in Part VI. Strategic Grievances, "act in furtherance of" a person's "right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana in connection with a public issue" includes any conduct in furtherance of the exercise of the constitutional right of petition or free speech in connection with a public issue or an issue of public interest.

### **Section 32. Defense to Strategic Grievance**

- (a) Defense to strategic grievance. It is a defense to a grievance filed against an attorney that the act or omission complained of is:
  - (1) an act or omission of that attorney in furtherance of the attorney's or the attorney's client's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana in connection with a public issue; and
  - (2) an act or omission taken in good faith and with a reasonable basis in law and fact.

### **Section 33. Motion to Dismiss Strategic Grievance**

- (a) Procedures.
  - (1) If an attorney files a motion to dismiss under this rule, the Disciplinary Commission shall do the following:
    - (i) Establish a reasonable period, not to exceed one hundred eighty (180) days, to expedite and rule on the motion.
    - (ii) Specify time limits for the discovery of evidence to respond to material issues raised in the motion.
  - (2) The attorney who files a motion to dismiss must state with specificity the public issue or issue of public interest that prompted the act in furtherance of the person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana.

- (3) The Disciplinary Commission shall make its determination based on the facts contained in the grievance, the motion filed under this rule, affidavits, and other material filed and/or discovered under the expedited proceeding.
  - (4) The motion to dismiss shall be granted if the Disciplinary Commission finds that the person filing the motion has proven, by a preponderance of the evidence, that the act upon which the grievance is based is a lawful act in furtherance of the person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana.
  - (5) The Disciplinary Commission must act on the motion to dismiss within thirty (30) days from the submission of evidence made by motion to the Disciplinary Commission that is discovered within the specific expedited time period allowed.
  - (6) If the Disciplinary Commission does not act to follow Section 33(a)(1) within the thirty (30) days provided in this subsection, the attorney filing the motion may immediately appeal the matter to the Indiana Supreme Court based on the Disciplinary Commission's failure to rule on the motion.
  - (7) If the Disciplinary Commission denies the motion, the attorney filing the motion may immediately appeal the matter to the Indiana Supreme Court.
  - (8) If the Indiana Supreme Court receives an appeal under this rule, the Court shall establish a reasonable time period, not to exceed ninety (90) days, to expedite and rule on the appeal.
  - (9) If the Indiana Supreme Court does not rule on the appeal within the ninety (90) days provided in subsection (9), the grievance shall be dismissed and fees assessed against the Disciplinary Commission based on the Court's failure to rule on the appeal.
- (b) Proceedings stayed. All investigative and discovery proceedings in the grievance shall be stayed upon the filing of a motion to dismiss made under this rule, except for discovery relevant to the motion.

#### **Section 34. Attorney Fees**

- (a) Attorney fees. A prevailing respondent on a defense or a motion to dismiss under this chapter is entitled to recover reasonable attorney's fees and costs from the grievant. A prevailing respondent may also recover reasonable attorney's fees and costs from the Disciplinary Commission if the Disciplinary Commission has not dismissed the grievance within 30 days of receiving it, per Section 33(a)(7).



## Proposal to the Indiana Supreme Court Committee on Rules of Practice and Procedure for Rule Amendments to the Indiana Rules of Court

*A separate form must be completed and submitted for each proposed rule amendment.*

<b>PERSON/ORGANIZATION MAKING THIS PROPOSAL</b>					
<i>Provide the name of the organization (if applicable) or individual making this proposal. If an organization, provide the contact information of a specific person who is familiar with the proposal, could discuss it, and answer questions.</i>					
Name of Organization		Attorney General of Indiana			<input type="checkbox"/> Not applicable
First Name	Theodore	Last Name	Rokita	Title	Attorney General of Indiana
Street Address		200 West Washington Street		Apartment/Unit #	219
City	Indianapolis	State	Indiana	Zip Code	46204
Phone Number	232-6201	Email Address	Rokita, Todd E <trokita219@atg.in.gov>		
<b>RULE SET AND RULE NUMBER OF PROPOSED CHANGE</b>					
<i>Provide rule number, then select the Rule Set from the drop-down list.</i>					
RULE SET	Admission & Discipline		RULE NUMBER	23	
<b>REASON FOR PROPOSED CHANGE</b>					
<i>What problem or issue are you trying to solve with this proposed amendment? What are you trying to accomplish?</i>					
<p>--The attached letter to Justin Forkner and Justices of the Supreme Court of Indiana is incorporated and repeated as if fully set forth herein.</p> <p>--The Proposed Rule Making is intended to fortify protections for a attorney accused of misconduct for political reasons. Political reasons may include and are not limited to election interference; deprivation or chilling of free speech in a political space; and interference with a legal officer's performance of official duties.</p> <p>--The Proposal is intended to provide a fair investigation for all attorneys in public service, from the Governor and Attorney General to the lawyer serving without pay on a municipal board or in a political subdivision.</p> <p>--The Proposal requires that an attorney who files a request for investigation to keep the matter confidential and that he or she have personal knowledge of the misconduct alleged.</p>					
<b>IDENTIFIED SUPPORT AND/OR OPPOSITION TO, AND PUBLIC COMMENT ON THE PROPOSED CHANGE</b>					
<i>If required, give an explanation in the area provided.</i>					
Has any committee, bar association, or organization vetted this proposed amendment, etc.?					<input checked="" type="radio"/> YES <input type="radio"/> NO
If yes, explain.					
The Proposed Rule Making has been vetted by senior Deputies Attorney General in the Office of Attorney General.					
Is this proposed amendment supported or opposed by any committee, bar association, or organization, group, etc.?					<input checked="" type="radio"/> YES <input type="radio"/> NO
If yes, explain.					
The Proposed Rule Making has the support of the Office of Attorney General.					

Would the proposed amendment benefit from public comment?

YES  
 NO

If no, explain.

**PROPOSED EFFECTIVE DATE**

*All rule amendments take effect on January 1 following the year in which the Supreme Court adopts them, unless there is a compelling reason for a different effective date.*

Are you proposing an effective date different from the January 1 date?

YES  
 NO

If yes, explain.

The Rules should be amended as soon as they are approved. There is no just reason for delay in implementation.

**INSTRUCTIONS FOR SUBMITTING THE PROPOSED RULE CHANGE DRAFT**

Use the WORD version of the rules from the Supreme Court website. <http://www.in.gov/judiciary/2695.htm>. Delete rules that are not included in the proposal. Attach the language for the proposed amendment using track changes before editing. Language that is proposed to be deleted is indicated by ~~strikethrough~~ and new language is indicated by underlining. Send the electronic version of the proposed amendment, in WORD format, to [proposed.rules@courts.in.gov](mailto:proposed.rules@courts.in.gov).

**SUBMITTED BY**

*The indicator "/s/" followed by the person's name is an acceptable e-signature.*

Signature

Date



11/8/24