

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 NO. 25S-DI-29

ANSWER

Theodore E. Rokita (“Respondent” or “Attorney General Rokita”), by counsel, answers as follows:

GENERAL RESPONSE

Attorney General Rokita issued a true and accurate press release on November 2, 2023. The press release was consistent with the Conditional Agreement and Affidavit he signed to resolve the prior disciplinary matter. Since the press release, Attorney General Rokita was re-elected by the citizens of the State of Indiana to serve another term as Attorney General. Attorney General Rokita filed proposed disciplinary rule changes with the Disciplinary Commission to protect the First Amendment constitutional right of free speech for attorneys and judges. Attorney General Rokita has cooperated with the Indiana Disciplinary Commission and continues to seek the proper administration of justice in a way most transparent to the public.

Attorney General Rokita’s public statements did not contradict the Conditional Agreement or Affidavit. Further, the Disciplinary Commission’s Complaint infringes on Attorney General Rokita’s First Amendment free speech rights, violates Indiana’s separation of powers principles, and violates Indiana’s anti-SLAPP statutes. As set forth below, Attorney General Rokita vehemently disputes the Disciplinary Commission’s charges against him.

BACKGROUND

1. Theodore E. Rokita (“Respondent”) is currently an attorney in active and good standing in Indiana.

Response: Admit.

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.

Response: Admit that Respondent was admitted to practice law in the State of Indiana on October 23, 1995. Admit that Respondent is subject to the Indiana Supreme Court’s disciplinary jurisdiction except for limitations imposed by the First Amendment of the United States Constitution and separation of powers/freedom of expression principles in the Indiana Constitution.

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

Response: Admit.

4. At all times relevant to this proceeding, Respondent has overseen a staff of more than 400 employees, with over 140 serving as attorneys for the agency.

Response: Admit.

FACTS GIVING RISE TO MISCONDUCT CHARGES

5. On November 2, 2023, the Indiana Supreme Court issued a Public Reprimand to Respondent in *Matter of Rokita*, Case No. 23S-DI-258, for violations of Indiana Rules of Professional Conduct 3.6(a) [footnote omitted] and 4.4(a) [footnote omitted], after a majority of the Court approved the Statement of Circumstances and Conditional Agreement for Discipline

(“Conditional Agreement”) submitted by the Indiana Supreme Court Disciplinary Commission (“Disciplinary Commission”) and Respondent.

Response: Admit.

6. Approximately two hours after the Court handed down the per curiam opinion in *Matter of Rokita*, Case No. 23S-DI-258, Respondent issued a press release about the discipline.

Response: Admit.

7. As more fully set forth below, Respondent made statements in the November 2, 2023 press release that contradicted statements he swore to in the Conditional Agreement and affidavit that accompanied the agreement.

Response: Deny.

8. As more fully set forth below, Respondent’s statements in the November 2, 2023 press release retracted his acceptance of responsibility for the misconduct he swore to in the Conditional Agreement and affidavit that accompanied the agreement.

Response: Deny.

9. As more fully set forth below, this retraction of his acceptance of responsibility demonstrates that Respondent was not candid with the Court when he attested that he admitted he had violated Indiana Professional Conduct Rules 3.6(a) and 4.4(a) and could not have successfully defended himself if the proceeding were prosecuted.

Response: Deny.

DISCIPLINARY COMPLAINT IN 23S-DI-258

10. On July 1, 2022, an Indiana newspaper published an article titled “Patients Head to Indiana for Abortion Services as Other States Restrict Care.” The story discussed an Indiana physician who had performed an abortion on a ten-year-old from Ohio and quoted the physician in the article.

Response: Admit.

11. In the days that followed, the Consumer Protection Division of the Indiana Attorney General’s Office received seven complaints from individuals who were not the physician’s patients about the physician’s performance of a termination procedure on a ten-year-old.

Response: Admit.

12. By July 12, 2022, Respondent’s office had initiated an investigation into six of the complaints and informed the physician about this investigation.

Response: Admit.

13. On July 13, 2022, Respondent appeared on a nationally televised program and was asked during the interview about the reporting and HIPPA obligations of the physician who had performed the termination procedure.

Response: Admit.

14. During the July 13, 2022 interview, Respondent responded to the interviewer as follows:

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.

Response: Admit that the above is a portion of Respondent's responses in a July 13, 2022, interview. Admit to the truthfulness and accuracy Respondent's statements in the interview.

15. Besides Respondent's appearance on the program, Respondent made other public statements, from July 13, 2022 through September 14, 2022, about the pending investigation of the physician.

Response: Admit.

16. At the time that Respondent made the statements described in ¶¶ 14 and 15, the Attorney General's Office had launched an investigation of the physician but had not yet filed notice with the Indiana Medical Licensing Board of intent to prosecute the physician and to seek sanctions against her medical license.

Response: Admit.

17. After Respondent made his public statements about the physician on the national television show on July 13, 2022, the Indiana Supreme Court Disciplinary Commission received Requests for Investigation ("RFIs") from twenty-one different individuals who raised concerns that Respondent's public statements about the physician and/or Respondent's conduct during the pending investigation of the physician violated professional conduct rules.

Response: Upon all information and belief, admit.

18. On November 30, 2022, the Attorney General’s Office filed an administrative complaint with the Medical Licensing Board against the physician in cause no. 2022 MLB 0024, and an adjudicatory hearing before the Medical Licensing Board was held on May 25 and 26, 2023.

Response: Admit.

19. On September 18, 2023, the Disciplinary Commission filed a Disciplinary Complaint against Respondent alleging three violations of the Indiana Rules of Professional Conduct. *See* Exhibit 1 – Disciplinary Complaint in Case No. 23S-DI-258.

- a. In Counts 1 and 2, the Disciplinary Commission alleged that Respondent violated Professional Conduct Rules 3.6(a) and 4.4(a) by referring to the physician as an “abortion activist acting as a doctor – with a history of failing to report” during the national television show on July 13, 2022, when the Attorney General’s Office had an investigation pending against the physician.
- b. In Count 3, the Disciplinary Commission alleged that Respondent engaged in conduct prejudicial to the administration of justice and violated Professional Conduct 8.4(d) by intentionally making public statements and/or directing others to issue public statements from July 2022 – September 2022 about the investigation of the physician, prior to a referral to the Indiana Medical Licensing Board, in contravention of the duty of confidentiality required under Ind. Code § 25-1-7-10(a).¹

Response: Admit. Admit the Disciplinary Commission filed a Complaint with an allegation that Attorney General Rokita violated a state statute even though the Disciplinary Commission had already agreed to dismiss that Count because it did not have sufficient evidence to show Attorney General Rokita violated the statute. The Disciplinary Commission

¹I.C. § 25-1-7-10(a) provides: “Except as provided in section 3(b) or 3(c) of this chapter, all complaints and information pertaining to the complaints [of a medical professional] shall be held in strict confidence until the attorney general files notice with the board of the attorney general's intent to prosecute the licensee.” Subsection (b) of this statute specifically notes that employees of the office of attorney general may not disclose or further the disclosure of information concerning a medical licensing complaint unless an exception applies.

decision to file a meritless charge (that it had already privately agreed to dismiss) created widespread confusion in the media.

20. On September 18, 2023, Respondent filed a 30-page Answer to the Disciplinary Complaint detailing Respondent's defenses to Count 3. Respondent also issued a press release summarizing his defense and linking to the filed Answer.

Response: Admit that Respondent filed a thirty (30) page Answer to the Disciplinary Complaint. That Answer speaks for itself. Respondent denies attempts to characterize the Answer in ways that are inconsistent with the language within the Answer itself.

CONDITIONAL AGREEMENT AND COURT'S OPINION

21. At the completion of the Disciplinary Commission's investigation and prior to the filing of charges, the Disciplinary Commission and Respondent entered into a Statement of Circumstances and Conditional Agreement for Discipline. *See* Exhibit 2 – Conditional Agreement.

Response: Admit.

22. In the Conditional Agreement, Respondent agreed that he violated Professional Conduct Rule 3.6(a) for making the public statement that the physician was an "abortion activist acting as a doctor – with a history of failing to report" as the statement "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)(l)." Exhibit 2, p.4.

Response: The Conditional Agreement speaks for itself. Respondent admits that he signed the Conditional Agreement.

23. Respondent also agreed in the Conditional Agreement that he violated Professional Conduct Rule 4.4(a) for making the public statement that the physician was an "abortion activist acting as a doctor – with a history of failing to report" as "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).” Exhibit 2, p. 4-5.

Response: The Conditional Agreement speaks for itself. Respondent admits that he signed the Conditional Agreement.

24. The Disciplinary Commission and Respondent further agreed that if the Court accepted the Conditional Agreement, Respondent would receive a Public Reprimand for his violations in Count 1 and 2. Exhibit 2, p. 6.

Response: The Conditional Agreement speaks for itself. Respondent admits that he signed the Conditional Agreement.

25. As to Count 3, the Disciplinary Commission and Respondent wrote and agreed to the following in the Conditional Agreement:

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.

Exhibit 2, p. 5.

Response: The Conditional Agreement speaks for itself. Respondent admits that he signed the Conditional Agreement. Admit that the Disciplinary Commission dismissed Count 3, which was the only Count that alleged a violation of Indiana statute.

26. In support of the proposed sanction, the Disciplinary Commission and Respondent agreed that, among other factors, Respondent should receive credit for being “cooperative and

responsive to the Commission’s requests for information” and for “accept[ing] responsibility for his misconduct.” Exhibit 2, p. 5.

Response: The Conditional Agreement speaks for itself. Respondent admits that he signed the Conditional Agreement.

27. At the end of the Conditional Agreement in a section titled “Voluntary Consent and Affidavit,” the section provides:

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. l(b)(3).

Exhibit 2, p. 7.

Response: The Conditional Agreement speaks for itself. Respondent admits that he signed the Conditional Agreement.

28. Respondent and his attorney, H. Christopher Bartolomucci, signed the Conditional Agreement, as did the Disciplinary Commission’s legal representatives. Exhibit 2, p. 8.

Response: Admit.

29. Accompanying the Conditional Agreement, Respondent also submitted a notarized affidavit signed by Respondent on September 1, 2023 (“Affidavit”). In the Affidavit, Respondent swore, under oath upon penalty of perjury, to the following:

- a. Respondent was “knowingly, freely, and voluntarily” consenting to the agreed discipline set forth in the “Statement of Circumstances and Conditional Agreement for Discipline,” submitted to resolve *In the Matter of Theodore E. Rokita*, Cause Number 23S-DI-258.
- b. Respondent “entered into said agreement without being subject to any coercion or duress whatsoever” and that he was “fully aware of the implications of submitting [his] consent.”
- c. Respondent acknowledged that there “exist[ed] grounds for [his] discipline” and the nature and grounds were “fully set forth in the

document, entitled, ‘Statement of Circumstances and Conditional Agreement for Discipline,’” which was incorporated into the Affidavit.

- d. Respondent acknowledged the material facts set out in the “Statement of Circumstances and Conditional Agreement for Discipline” were true.
- e. Respondent was submitting the agreement to discipline because “[he knew] that if this proceeding were prosecuted, [he] could not successfully defend [himself].”

Exhibit 2, p. 9.

Response: The Affidavit speaks for itself. Respondent admits that he signed the Affidavit.

30. The Conditional Agreement was submitted to the Court for approval on or about September 19, 2023.

Response: Upon all information and belief, admit.

31. On November 2, 2023, at 9:50 a.m., the Court issued a per curiam opinion in *Matter of Rokita*, Case No. 23S-DI-258, with a majority of the Court approving the Conditional Agreement and issuing a Public Reprimand of Respondent.

Response: Admit.

32. The majority noted in the opinion that, “In a sworn affidavit attached to the conditional agreement, made under penalty of perjury, Respondent admits these two rule violations [Rule 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.” Exhibit 3, p. 4-5. In determining that the proposed sanction was appropriate, the Court’s majority specifically credited Respondent’s “acceptance of responsibility” as a mitigating factor. Exhibit 3, p. 5. This comports with the Court’s practice of consistently noting the importance of remorse and acceptance of responsibility as mitigating

factors, including in cases involving public officials.² Likewise, the Court views lack of remorse and denial of responsibility as aggravating factors.³

Response: Admit that the Indiana Supreme Court issued an opinion. That opinion speaks for itself. As to all else, deny.

RESPONDENT’S NOVEMBER 2, 2023 PRESS RELEASE

33. On November 2, 2023, at approximately 12:04 p.m.—a little more than two hours after the Court issued its per curiam decision—Respondent directed that a press release titled “Attorney General Todd Rokita’s Statement on Disciplinary Commission Resolution” be publicly issued from the Attorney General’s Office and distributed to everyone on the Attorney General Office’s subscription list. Exhibit 4 – 11/2/23 press release (attached and incorporated in full herein).

Response: Admit.

34. At Respondent’s direction, a copy of the press release also was placed on the Attorney General Office’s official website at: <https://www.in.gov/attorneygeneral/newsroom/>. Exhibit 4 – 11/2/23 Press Release.

Response: Admit.

² E.g., *In re Norrick*, 233 N.E.3d 403, 406 (Ind. 2024) (judge “accept[ed] responsibility for his misconduct”); *In re Meade*, 200 N.E.3d 448, 451 (Ind. 2023) (judge “accepted responsibility for his conduct and expressed remorse”); *In re Miller*, 178 N.E.3d 1194, 1195–96 (Ind. 2022) (judge “expressed remorse and accepted responsibility for his misconduct”); *In re Scheibenberger*, 899 N.E.2d 649, 651 (Ind. 2009) (judge “accepted responsibility and is remorseful”); *In re Alsip*, 499 N.E.2d 1102, 1102–03 (Ind. 1986) (judge stated “I accept full responsibility for this incident”; “I also occupy public office” and “sincerely apologize to the public, my fellow judges and also the legal profession and also to this Court”; “I have not asked for leniency and I expect none”).

³ E.g., *In re Stern*, 11 N.E.3d 917, 921 (Ind. 2014) (“instead of accepting responsibility for his actions, Respondent blames the judges in the lawsuits, the Commission, and others,” and “has shown no insight into his misconduct”); *In re Sniadecki*, 924 N.E.2d 109, 120 (Ind. 2010) (respondent “has failed to accept responsibility for his actions and still denies wrongdoing”); *In re Brewer*, 110 N.E.3d 1141, 1143 (Ind. 2018) (respondent “has failed to accept responsibility for her misconduct”); *In re Jeffries*, 104 N.E.3d 567, 572 (Ind. 2018) (respondent “has not accepted responsibility for his misconduct”); *In re Brown*, 766 N.E.2d 363, 366 (Ind. 2002) (noting respondent’s “absolute lack of remorse” and “failure to accept responsibility”).

35. Respondent's statements in the November 2, 2023 press release included the following:

- a. "First things first: I deny and was not found to have violated anyone's confidentiality or any laws."
- b. "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 caused by an abortionist who put her interests above her patient's. I received a 'public reprimand' for saying that – '. . . we have this abortion activist acting as a doctor – with a history of failing to report.'"
- c. Immediately after the statement in subparagraph (b), Respondent stated in relevant part in the next two paragraphs:

The media, medical establishment and cancel culture, all on cue, supported - and then attempted to vindicate - the abortionist who intentionally exposed personal health information at a political rally all in furtherance of their shared ideological and business interests.

These liberal activists would like to cancel your vote because they hate the fact I stand up for liberty. . . .

- d. In the paragraph following the statements in subsection (c), Respondent stated:

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, which is also very important to me.

- e. "In order to resolve this, I was required to sign an affidavit without any modifications."

Exhibit 4 – 11/2/23 Press Release.

Response: Admit that a press release was publicly issued from the Attorney General's Office on November 2, 2023, and that Exhibit 4 is a true and accurate copy of this press release.

Admit that the sub-parts above represent a portion of the press release.

36. Respondent's statements in the November 2, 2023 press release, as described in ¶35 (a) through (e), are contradictory to Respondent's assertion in the Conditional Agreement that Respondent "accepted responsibility for his misconduct."

Response: Deny.

37. Respondent's statement in the November 2, 2023 press release, as described in ¶35(a) that Respondent "[had not] violated . . . any laws," is contradictory to Respondent's sworn assertion in the Conditional Agreement and the accompanying Affidavit that he violated Indiana Professional Conduct Rules 3.6(a) and 4.4(a).

Response: Deny.

38. Respondent's statement in the November 2, 2023 press release, as described in ¶35(d) ("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...."), is contradictory to Respondent's sworn assertion in the Affidavit accompanying the Conditional Agreement that Respondent submitted to the agreement to discipline because he "[knew] that if this proceeding were prosecuted, [he] could not successfully defend [himself]."

Response: Deny.

39. Respondent's statement in the November 2, 2023 press release, as described in ¶35(e) ("In order to resolve this, I was required to sign an affidavit without any modifications"), is contradictory to Respondent's statement in the Conditional Agreement that he was "voluntarily consent[ing] to [the] Statement of Circumstances and Conditional Agreement for Discipline."

Response: Deny.

40. Respondent's statement in the November 2, 2023 press release, as described in ¶35(e), is contradictory to Respondent's statement in the Affidavit accompanying the Conditional

Agreement that Respondent “consent[s], knowingly, freely, and voluntarily to the agreed discipline” that was set out in the Conditional Agreement and that he “entered into said agreement without being subject to any coercion or duress whatsoever”

Response: Deny.

AFTERMATH OF RESPONDENT’S PRESS RELEASE

41. In the days immediately after Respondent issued the November 2, 2023 press release, various media outlets wrote articles expressing confusion as to the extent of Respondent’s reprimanded conduct, raised questions about the inconsistencies between the statements in Respondent’s press release and the statements in the Affidavit referenced in the Court’s opinion, and/or challenged Respondent’s acceptance of responsibility in light of the statements in his press release. *See* Exhibits cited in the Disciplinary Commission’s Verified Petition Requesting Conditional Agreement for Discipline and Affidavit Be Released for Public Access in Case No. 23S-DI-258 (incorporated herein).

Response: Admit that the Disciplinary Commission’s decision to file a meritless charge (that it had already privately agreed to dismiss) created widespread confusion in the media. As to all else, Respondent lacks sufficient information to admit or deny and therefore denies the remainder of paragraph 41.

42. After the issuance of Respondent’s November 2, 2023 press release, the Disciplinary 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 the accompanying Affidavit.

Response: Respondent lacks sufficient information to admit or deny and therefore denies paragraph 42.

43. Pursuant to Admission and Discipline Rule 23, Section 22(a)(5), conditional agreements for discipline generally are not open to public inspection.

Response: The language of Admission and Discipline Rule 23, Section 22(a)(5) speaks for itself.

44. Due to the public confusion about Respondent's agreement for discipline, the Disciplinary Commission filed on December 11, 2023, pursuant to Indiana Access to Court Records Rule 9(B), a Verified Petition Requesting Conditional Agreement for Discipline and Affidavit Be Released for Public Access.

Response: Admit that the Disciplinary Commission filed a Verified Petition Requesting Conditional Agreement for Discipline and Affidavit Be Released for Public Access, despite the rules requiring that the Conditional Agreement and Affidavit remain confidential. Respondent lacks sufficient knowledge to admit or deny the Disciplinary Commission's motives in filing the Petition.

45. On February 1, 2024, the Court granted the Disciplinary Commission's petition, and the Court ordered the Conditional Agreement and accompanying Affidavit made available for public inspection.

Response: Admit.

46. On or about November 6 and 8, 2023, the Disciplinary Commission received RFIs (Internal Matter Nos. 24-0608 and 24-0618) from two individuals who expressed concerns that Respondent committed ethical misconduct and was dishonest with the Court, given his statements in the November 2, 2023 press release.

Response: Respondent admits that Democrat activists filed complaints against him for politically motivated reasons. Respondent denies ethical misconduct or that he was dishonest

with the Court in the statements made in the November 2, 2023, press release. As to all else, Respondent lacks sufficient knowledge to admit or deny and therefore denies paragraph 46.

47. To evaluate Respondent's intent and meaning regarding certain statements made in the November 2, 2023 press release, the Disciplinary Commission sent Respondent and his communications staff subpoenas duces tecum to provide copies of all prior drafts of the November 2, 2023 press release that were written, edited, revised, or reviewed by Respondent and to provide copies of all written or electronic communications sent to or from Respondent about the November 2, 2023 press release or the prior drafts.

Response: Admit that the Disciplinary Commission sent Respondent and communications staff with the Office of the Attorney General subpoenas duces tecum to provide copies of all prior drafts of the November 2, 2023 press release that were written, edited, revised, or reviewed by Respondent and to provide copies of all written or electronic communications sent to or from Respondent about the November 2, 2023 press release or the prior drafts. Respondent lacks sufficient knowledge to admit or deny the Disciplinary Commission's motives in serving the subpoenas and therefore denies the remainder of paragraph 47.

48. The records received in response to the subpoenas revealed that Respondent and his communications team began drafting the proposed press release in early October 2023 and created multiple drafts of the press release.

Response: Admit that the November 2, 2023, press release went through a revision and editing process and that multiple drafts of the press release were created. Admit that multiple individuals were involved in this process. As to all else, deny.

49. Respondent actively took part in drafting, editing, and instructing other Attorney General's Office employees and a subcontractor about the information Respondent wanted contained in the drafts and final press release.

Response: Admit that Respondent played a role in drafting the November 2, 2023, press release. Multiple individuals were involved in the drafting and editing process. Respondent denies any insinuation that he expressly approved all materials contained in the various drafts of the press release.

50. Respondent gave final approval for the November 2, 2023 press release and was involved in the final edits to the press release minutes before it was issued.

Response: Admit.

51. Prior drafted public statements/press releases on the matter had proposed titles such as:

“Rokita Beats Attempt to Take His Law License” (10/19/23 Draft);
“Rokita Ends Attempt to Remove His Law License” (10/21/23 Draft, ver. 1); and
“Cancel Culture Loses Battle to Vindicate Abortionist, Take Law License and Stifle Free Speech” (10/22/23 Draft).

Response: Admit that rejected drafts of the press release contained different titles, including the titles above. Respondent denies any insinuation that he expressly approved all materials contained in the various drafts of the press release.

52. Prior drafts of the press release/public statement contained the following language as to Respondent's reason for settling the matter and his ability to defend his legal cause:

- a. *“This settlement was made only to save Indiana taxpayer money, and I do not feel as though I did anything wrong. . . .”* (10/13/23 Draft).
- b. “This week, as the result of a settlement that ends this matter, I agreed to a simple public reprimand over an X word answer I gave to a TV news host more than one year ago in the middle of an international

media storm caused by an abortion doctor.

I was not found to have violated anyone’s confidentiality or any laws . . . I will state again— as I did at the time and as I articulate below— that what I said was factual.

But, ending this matter now means I can save a significant amount of taxpayer money from defending these facts. . . .” (10/16/23 Draft).

- c. “My work serving fellow Hoosiers as attorney general will continue without interruption. ***I was not found to have violated anyone’s confidentiality or any laws.*** Despite the cancel culture’s attempt to take my license . . . it all boiled down to a truthful 16-word answer I gave during an international media storm caused by an abortion activist. I was given a simple public reprimand for stating that ‘. . . we have this abortion activist acting as a doctor—with a history of failing to report.’

The corrupt media pundits and establishment hypocrites grossly hyped this story even wanting you to believe that saying those 16 words were worse than committing some kind of violent crime . . . ***I could have fought over 16 words, but ending this politically driven litigation will save alot of taxpayer money.***” (10/19/23 Draft).

- d. ***“I could have fought over these 16 words, but ending this politically driven litigation will save taxpayer’s money and allow me to continue focusing on the important work of my office. That is why we settled.”*** (10/21/23 Draft, ver. 1)

- e. “. . . I am thankful the court system turned back an attempt by others to use a disciplinary process as a back door to removing me from office. ***I was not found to have violated anyone’s confidentiality or to have violated any laws. I could have chosen to fight over the attempt to weaponize a 16-word factual statement spoken during a television interview but ending this politically driven litigation will ultimately save taxpayer’s money.***” (10/21/23 Draft, ver. 1, short statement).

- f. “Despite the failed attempt to suspend my law license . . . ***it all boiled down to a truthful 16-word answer I gave over a year ago*** during an international media storm caused by an abortionist who put her interests above her patient’s. ***I received a public reprimand for repeating an interviewer’s commentary that ‘...we have this abortion activist acting as a doctor— with a history of failing to report.’***

These hypocrites [media, medical establishment, and cancel culture] would like to cancel your vote because I take them on every day and

they don't like it

I could have fought over those 16 words, but ending their campaign now will save a lot of taxpayer money and distraction.” (10/23/23 Draft).

(emphasis added, not in the originals).⁴

Response: Admit that rejected draft versions of the press release contained the above language. Respondent denies any insinuation that he expressly approved all materials contained in the various drafts of the press release.

53. As recently as January 7, 2025, Respondent was quoted as saying, “One thing that is clear is that the AG did nothing dishonest, illegal, or even wrong, and he will continue to fight for the people of this state no matter how much the Left hates it.” *See* Alexa Shrake, *Once Reprimanded Rokita Details His Proposed Changes for Lawyer Discipline*, INDIANA LAWYER, Jan. 7, 2025.

Response: Admit that Respondent was quoted as making this statement. Respondent's quote was responding to the recent wave of politically motivated disciplinary complaints, irrelevant to the Conditional Agreement and Affidavit. Deny any implication that this quote was referencing the at-issue Conditional Agreement and Affidavit.

54. Respondent's prior drafts, the statements in the November 2, 2023 press release (when compared with the sworn statements in the Conditional Agreement and Affidavit listed below), and his continuing course of conduct demonstrate Respondent's lack of candor and dishonesty to the Court when he swore that he was accepting responsibility for the agreed misconduct:

⁴ Items emphasized in ¶52 and its subparts pertain to Respondent's reason for settling Case No. 23S-DI-258 and his beliefs about his ability to defend his legal cause. The remaining statements provide the context for the emphasized statements in the drafts.

| <u>November 2, 2023</u> | <u>Conditional Agreement & Affidavit</u> |
|---|--|
| “First things first: I deny and was not found to have violated...any laws.” | <p>“[T]he parties agree that Respondent violated Rule 3.6(a), as described in Count 1 of the Complaint.”</p> <p>“[T]he parties agree that Respondent violated Rule 4.4(a), as described in Count 2 of the Complaint.”</p> |
| “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....” | “I submit my agreement to discipline because I know that if this proceeding were prosecuted, I could not successfully defend myself.” |
| “In order to resolve this, I was required to sign an affidavit without any modifications.” | <p>“I consent, knowingly, freely, and voluntarily, to the agreed discipline that is set forth in [the Conditional Agreement].”</p> <p>“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.”</p> <p>“Respondent voluntarily consents to this Statement of Circumstances and Conditional Agreement for Discipline [and] the parties incorporate by reference the attached Affidavit....”</p> |

Response: Deny.

APPLICABLE RULES OF PROFESSIONAL CONDUCT

55. Indiana Professional Conduct Rule 3.3(a)(1) provides that a lawyer shall not knowingly “make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”

Response: The Indiana Rules of Professional Conduct speaks for itself. Respondent denies violating this rule.

56. Indiana Professional Conduct Rule 8.4(c) provides that it is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

Response: The Indiana Rules of Professional Conduct speaks for itself. Respondent denies violating this rule.

57. Indiana Professional Conduct Rule 8.4(d) provides that it is professional misconduct for a lawyer to “engage in conduct that is prejudicial to the administration of justice.”

Response: The Indiana Rules of Professional Conduct speaks for itself. Respondent denies violating this rule.

58. Comment 4 to Indiana Rule of Professional Conduct 8.4 notes that, “Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional rule of lawyers.”

Response: The Indiana Rules of Professional Conduct speaks for itself. Respondent denies violating this rule.

CHARGES

Respondent incorporates the responses set forth in ¶¶ 5-58.

Count 1

The Disciplinary Commission charges that Respondent made false statements to the Supreme Court in the Conditional Agreement and accompanying Affidavit in Case No. 23S-DI-258. These statements included Respondent's sworn assertions that he believed there existed grounds for his discipline and that he believed he could not successfully defend himself if the matter was prosecuted. By engaging in this conduct, Respondent violated Indiana Professional Conduct Rule 3.3(a)(1).

Response: Deny.

Count 2

The Disciplinary Commission charges that Respondent engaged in dishonest behavior and misrepresented to the Supreme Court in a Conditional Agreement and accompanying Affidavit in Case No. 23S-DI-258 that he accepted responsibility for his misconduct. By engaging in this conduct, Respondent violated Indiana Professional Conduct Rule 8.4(c).

Response: Deny.

Count 3

The Disciplinary Commission charges that Respondent violated Indiana Professional Conduct Rule 8.4(d) by issuing a press release on November 2, 2023 in which Respondent made statements that contradicted the statements he swore to in the Conditional Agreement and accompanying Affidavit in Case No 23S-DI-258.

Response: Deny.

WHEREFORE, Respondent requests that this cause of action be dismissed, with costs paid by the Disciplinary Commission, and all other just and proper relief.

AFFIRMATIVE AND OTHER DEFENSES

1. Respondent's public statements did not contradict the Conditional Agreement or Affidavit.
2. This action violates the First Amendment of the U.S. Constitution as well as Article 1, Section 9 of the Indiana Constitution.
3. This action violates the Separation of Powers provided by the Indiana Constitution.
4. This action violates Indiana's anti-SLAPP statutes because Attorney General Rokita acted in furtherance of his right of petition or free speech under the Constitution of the United States and the Constitution of the State of Indiana in connection with an issue of public interest.
5. Respondent is entitled to attorneys' fees and costs.

WHEREFORE, Respondent requests that this cause of action be dismissed, with costs paid by the Disciplinary Commission, and all other just and proper relief.

Dated: August 15, 2025

Respectfully submitted,

/s/ Paul O. Mullin

/s/ Ryan Shouse

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2025, I served the foregoing to all parties of record by electronically filing through the Indiana Court's e-filing system.

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