IN THE SUPREME COURT OF THE
STATE OF INDIANA

In the Matter of: Theodore E. Rokita	)	CAUSE NO. 25S-DI-29

ORDER ON RESPONDENT'S MOTION TO COMPEL DISCOVERY AND COMMISSION'S MOTION FOR PROTECTIVE ORDER

Relevant Facts and Procedural History

1. On January 31, 2025, the Commission filed a verified disciplinary complaint ("the Complaint") against Theodore E. Rokita ("Respondent"). In the Complaint, the Commission has alleged that Respondent (1) made false statements to the Indiana Supreme Court in Cause Number 23S-DI-258, a previous disciplinary proceeding; (2) engaged in dishonest behavior by misrepresenting that he had accepted responsibility for prior misconduct in Cause No. 23S-DI-258; and (3) violated Indiana Professional Conduct Rule 8.4(d) by contradicting prior admissions he had made in a sworn affidavit filed in Cause No. 23S-DI-258.

2. On February 20, 2025, Respondent moved to dismiss the Complaint.

3. On March 24, 2025, the Commission was served with Respondent's first set of interrogatories, requests for production of documents, and requests for admissions pursuant to Indiana Trial Rule 26(3).

4. On April 23, 2025, the Commission moved to stay discovery until the Indiana Supreme Court had ruled on Respondent's motion to dismiss and, if denied, a hearing officer could be appointed. The same day, the Commission moved for a protective order for certain materials requested by Respondent.

5. On May 19, 2025, Respondent moved to compel discovery of "communications about

Respondent, the investigations involving Respondent, and information related to the Commission's allegations in its Complaint filed against the Respondent." Respondent's Motion to Compel Discovery p. 1. In Respondent's motion to compel discovery and Respondent's response in opposition to motion for protective order, he argues that the discovery sought is relevant to the Commission's motives for pursuing this complaint and his Anti-SLAPP defense. Respondent's Motion to Compel Discovery pp. 7–8; Respondent's Response in Opposition to Motion for Protective Order pp. 4–5.

6. On July 18, 2025, the Indiana Supreme Court denied Respondent's motion to dismiss, granted the Commission's motion to stay, and appointed the three members of this Panel. Moreover, the Supreme Court provided valuable guidance regarding the scope and nature of our inquiry:

> [The parties'] submissions, though extensive, reveal very little factual disagreement. That disagreement is vehement, but it also seems narrow, so there may not be much to litigate through a hearing. At bottom, they agree about what Respondent said; they disagree about what he thought and meant. And as both sides describe the dispute, it seems to boil down primarily to whether Respondent really meant it when he told us he was accepting responsibility for violating the Rules of Professional Conduct.
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> Even there, they still seem to agree on key points. All seem to agree that accepting responsibility means admitting a mistake and committing to do better. And nobody seems to quarrel with the notion that many things could be true all at once: Respondent could believe in the righteousness of his office's investigation; he could believe that political motivations inspire his political adversaries to complain about him to the Commission; he could believe that our Court should make changes to its disciplinary process to address his concerns; but *all while still acknowledging he made a mistake because his public comments about his office's investigation of Dr. Bernard violated our Rules of Professional Conduct because they risked prejudicing a proceeding against her*, as he told us before.

> The parties reached agreement once before on multiple, more complicated and contentious issues surrounding Respondent's comments about his office's investigation of Dr. Bernard. The current singular, simpler dispute stems from that agreement. So with help from a mediator, they might at least explore whether they can get back on the same page, either through an additional agreed public statement or through some other means. And if they do reach an agreement, they might also explore the parameters of future commentary about that resolution to avoid ending up back in the same place.

Matter of Rokita, 262 N.E.3d 823, 832 (Ind. 2025) (emphasis in original).

7. On August 15, 2025, Respondent answered the Complaint, (1) generally denying that his public statements represent a rejection of responsibility for his previous actions; (2) raising an Anti-SLAPP defense, claiming that the Commission is seeking to inhibit or prevent Respondent's exercise of his constitutional right to free speech; and (3) alleging that the Complaint represents unconstitutional violations of his right to free speech and the principle of separation of powers.

Respondent's Motion to Compel Discovery and the Commission's Motion for Protective Order

8. Respondent has filed a motion to compel discovery, in which he requests that we order the Commission to provide all "communications about Respondent, the investigations involving Respondent, and information related to the Commission's allegations in its Complaint filed against the Respondent[,]" Respondent's Motion to Compel Discovery p. 1, while the Commission has moved us to issue a protective order for much of the requested material on the bases that it is confidential, privileged, and/or irrelevant; the request is unduly burdensome and annoying; and the requested material is unlikely to lead to admissible evidence. Pursuant to Indiana Trial Rule 26(B)(1) (as incorporated by Indiana Admission and Discipline Rule 23(14)(d)),

> [p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject-matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party[.] It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
>
> The frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought or; (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

Ind. Trial Rule 26(B)(1).

9. Moreover, Trial Rule 26(C) provides, in part, that

> Upon motion by any party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county where the deposition is being taken, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
>
> (1) that the discovery not be had;
> (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
> (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
> (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters[.]

10. A threshold inquiry is whether the material requested is "relevant to the subject-matter

involved in the pending action[,]" Trial R. 26(B)(1), and, to answer that question, we must determine what the subject matter of this action is. Thankfully, as mentioned, the Indiana Supreme Court has provided significant guidance on this point.

11. Without recounting the entire history, in summary, in Cause No. 23S-DI-258, Respondent admitted to having violated rules (1) prohibiting attorneys involved in investigations from making public statements that are likely to prejudice a legal proceeding and (2) prohibiting statements without legitimate litigation purpose that embarrass or burden another. Respondent's acceptance of responsibility was part of a negotiated settlement with the Commission, in which he also agreed to be publicly reprimanded. After the Indiana Supreme Court accepted the agreement, Respondent issued a press release and made other public statements about the case, actions which the Commission now alleges have contradicted the agreement by denying responsibility.

12. In our view, our task, as framed by the Supreme Court's opinion denying Respondent's motion to dismiss, is to determine whether Respondent intentionally misled the Supreme Court in Cause No. 23S-DI-258, thereby violating his duty of candor, and nothing more. This is not necessarily the end of our inquiry, however.

13. The next question is how Respondent's Anti-SLAPP[1] defense affects the scope of our inquiry; because this defense is not available in a disciplinary proceeding, the answer is that it does not. Indiana Code section 34-7-7-5 provides that Anti-SLAPP is a

[1] Indiana law provides a defense to certain "[s]trategic lawsuits against public participation[,]" or SLAPPs. *Hamilton v. Prewett*, 860 N.E.2d 1234, 1241 (Ind. Ct. App. 2007), *trans. denied*. We cannot resolve the pending discovery matters (a task specifically given to us by the Supreme Court) without first deciding whether Respondent can raise an Anti-SLAPP defense because essentially all of Respondent's discovery requests relate to it and nothing else.

defense "in a civil action[,]" and the Indiana Supreme Court has held that disciplinary proceedings are a "type of litigation [that] is neither criminal nor civil." *Matter of Roberts*, 442 N.E.2d 986, 987 (Ind. 1983).[2]

14. Respondent cannot identify a single disciplinary case in any United States jurisdiction in which the subject of the proceeding was allowed to raise an Anti-SLAPP defense, and our research has revealed none. In fact, the only appellate court in which the possibility has even been raised rejected it emphatically:

> The purpose and application of the anti-SLAPP statute are wholly inapplicable to attorney disciplinary proceedings. The respondent is not being sued for his exercise of First Amendment rights of free speech; rather, he is the subject of a disciplinary complaint, deriving from his conduct as a licensed attorney, brought by Disciplinary Counsel under the rules of this Court after a thorough investigation. We find no merit in respondent's claim that this process is somehow being used as a vehicle for chilling his free speech rights, nor in his claim that the anti-SLAPP statute has any applicability to this type of proceeding.

In re McKenna, 110 A.3d 1126, 1146–47 (R.I. 2015). We are in agreement with the Rhode Island Supreme Court's reasoning on this matter. To the extent that Respondent seeks discovery for the express purpose of supporting his barred Anti-SLAPP defense, it is denied.

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[2] The Indiana Supreme Court elaborated:

> Preliminarily, it would be well to note that [disciplinary] proceedings are neither civil nor criminal in nature but are special proceedings, *sui generis*, and result from the inherent power of courts over their officers. Such proceedings are not lawsuits between parties litigant but rather are in the nature of an inquest or inquiry as to the conduct of the respondent. They are not for the purpose of punishment, but rather seek to determine the fitness of an officer of the court to continue in that capacity and to protect the courts and the public from the official ministration of persons unfit to practice. *Ex parte Wall*, 107 U.S. 265, 2 S. Ct. 569, 27 L. Ed. 552 (1882). Thus the real question at issue in a [disciplinary] proceeding is the public interest and an attorney's right to continue to practice a profession imbued with public trust. *In re Fisher*, 179 F.2d 361 (7th Cir. 1950), *cert. denied sub nom. Kerner, et al. v. Fisher*, 340 U.S. 825, 71 S. Ct. 59, 95 L.Ed. 606 (1950).

Roberts, 442 N.E.2d at 987–88 (quoting *In Re Echeles*, 430 F.2d 347, 349–50 (7th Cir. 1970)).

15. It is with all of this in mind that we turn to Respondent's requests, which are for "communications about Respondent, the investigations involving Respondent, and information related to the Commission's allegations in its Complaint filed against the Respondent." Respondent's Motion to Compel Discovery p. 1. We cannot see how any internal communication, investigation, or other information gathered by the Commission could shed any light on Respondent's state of mind when he indicated to the Supreme Court that he had taken responsibility for his actions in Cause No. 23S-DI-258, which, again, is the only question before us. Indeed, Respondent does not claim that they do, claiming only that the requested materials are relevant to his Anti-SLAPP defense, *i.e.*, that they could shed light on the question of whether Commission member Barnard Carter had a conflict of interest that had prevented him from participating in Cause No. 23S-DI-258 and "to inquire as to the Commission's motives in this case." Respondent's Motion to Compel Discovery p. 7. As we have already determined, an Anti-SLAPP defense is not available to Respondent in this proceeding.[3]

16. To be clear, this conclusion applies with equal force to any other discovery request that seeks to obtain information regarding the motives or biases of the Commission, any of its members, or its staff, however framed or pled.

17. Because the matters for which Respondent seeks discovery are not before the Panel, they are not relevant, and we therefore deny Respondent's motion to compel

[3] Respondent also contends that the Commission (1) wrongly attempts to use confidentiality rules to assert privileges; (2) wrongly claims that the discovery requests are unduly burdensome; and (3) asserts blanket privileges without providing a privilege log, a practice disfavored by the Supreme Court. Respondent's Motion to Compel Discovery pp. 1–2. Because Respondent cannot establish the potential relevance of the materials sought, we need not address these additional arguments.

discovery in all respects. We need not address the Commission's motion for a protective order, as our disposition of Respondent's motion to compel discovery renders it moot.

All of which is ordered August 22, 2025

Cale J. Bradford
Presiding Hearing Officer

Nancy H. Vaidik
Hearing Officer

William G. Hussmann, Jr.
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