



IN THE

# Indiana Supreme Court

Supreme Court Case No. 19S-DI-427

## In the Matter of
## Michael C. Steele,

*Respondent.*

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Decided: August 6, 2021

Attorney Discipline Action

Hearing Officer Lloyd H. Milliken, Jr.

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**Per Curiam Opinion**

Chief Justice Rush and Justices David, Massa, Slaughter, and Goff concur.

**Per curiam.**

We find that Respondent, Michael C. Steele, committed attorney misconduct by making an improper demand that disciplinary grievances filed against him be withdrawn as a condition for settlement in a civil matter. For this misconduct, we conclude that Respondent should be suspended for 30 days with automatic reinstatement.

The matter is now before us on the report of the hearing officer appointed by this Court to hear evidence on the Indiana Supreme Court Disciplinary Commission's verified disciplinary complaint. Respondent's 2005 admission to this state's bar subjects him to this Court's disciplinary jurisdiction. *See* IND. CONST. art. 7, § 4.

# Procedural Background and Facts

The genesis of this case was Respondent's breakup with his girlfriend in July 2018. In the immediate aftermath of that breakup, criminal and protective order proceedings were brought against Respondent in Hamilton County, and Respondent filed suit against his now ex-girlfriend alleging defamation and other counts. A few months later, Respondent's ex-girlfriend and her sister filed disciplinary grievances against Respondent with the Commission.

In December 2018, Respondent sent an email to opposing counsel in the defamation case. Respondent's email demanded, among other things, that the disciplinary grievances filed against him be withdrawn as a condition precedent to settlement discussions.

The criminal and protective order proceedings against Respondent in Hamilton County eventually were dismissed. The Commission also eventually dismissed the grievances filed by the two sisters against Respondent. During its investigation, though, the Commission learned of the email Respondent had sent to opposing counsel in the defamation case, and in July 2019 the Commission filed a disciplinary complaint alleging that Respondent's demand in that email violated Professional Conduct Rule 8.4(d).

After many twists and turns, this matter proceeded to final hearing in December 2020, and the hearing officer issued his report in February 2021. Respondent has petitioned for review of that report, the Commission has filed a brief on sanction, and responsive briefs have been filed.[1] The matter is now ripe for our consideration.

## Discussion and Discipline

Respondent does not dispute having sent the email in question to opposing counsel in the defamation case, nor does he dispute the contents of that email. And due to several procedural irregularities in this case we need not elaborate upon, we are constrained to accept as true for purposes of this proceeding that the grievances Respondent sought to have withdrawn were meritless (that is to say, they did not involve any underlying attorney misconduct committed by Respondent).

That leaves us with the essential legal question framed by the parties and in the hearing officer's report—can an attorney's demand that disciplinary grievances filed by an opposing party in a civil matter be withdrawn as a condition of settlement be "prejudicial to the administration of justice" within the meaning of Rule 8.4(d) when those grievances were meritless?

Our disciplinary precedent firmly establishes that a coercive threat to file a grievance with the Commission, or (as here) a quid pro quo demand that a grievance be withdrawn, violates Rule 8.4(d).[2] *See, e.g.*, *Matter of*

[1] After the briefing contemplated by Admission and Discipline Rule 23(15) had concluded, Respondent filed two additional motions—a motion to compel production of evidence and a request for investigation into the conduct of Disciplinary Commission staff. We hereby deny both motions.

[2] Our precedent is consistent with other jurisdictions' interpretation and application of professional conduct rules analogous to our Rule 8.4(d). *See, e.g.*, *Disciplinary Counsel v. Chambers*, 125 Ohio St.3d 414, 417, 928 N.E.2d 1061, 1064-65 (2010); *Matter of Tartaglia*, 20 A.D.3d 81, 84, 798 N.Y.S.2d 458, 460-61 (2005); *Lawyer Disciplinary Board v. Artimez*, 208 W.Va. 288, 295-97, 540 S.E.2d 156, 164-65 (2000); *Florida Bar v. Frederick*, 756 So.2d 79, 86-87 (Fla. 2000); *In re Conduct of Boothe*, 303 Or. 643, 653-55, 740 P.2d 785, 790-91 (1987).

*Ramirez*, 853 N.E.2d 121, 121 (Ind. 2006) (holding that even suggesting that a client withdraw a grievance violates Rule 8.4(d)). Such a demand has the potential to prejudice the disciplinary investigation, notwithstanding the fact that a grievance cannot be withdrawn once it has been filed, because it can frustrate the Commission's ability to secure the grievant's cooperation and obtain evidence. *Cf. Matter of Moore*, 665 N.E.2d 40, 42-43 (Ind. 1996) (explaining that unreasonable disruptions to the "resolution of a case by an orderly procedure"—even absent prejudice to parties—violates Rule 8.4(d)).

For example, in *Ramirez*, the respondent attorney sent his dissatisfied clients (a husband and wife) a letter forgiving their outstanding legal bill and agreeing to withdraw from representing them. 853 N.E.2d at 121. The attorney then asked his clients "in return" to discuss with one another "the possibility" of withdrawing a disciplinary grievance they had filed against him. *Id.* at 121, 122. The clients did not attempt to withdraw the grievance. *Id.* at *121.* A majority of this Court accepted the parties' conditional agreement for discipline, explaining that while the attorney's conduct was not egregious, "we wish to make clear that even such relatively mild action designed to stop a disciplinary proceeding is prohibited by Rule 8.4(d)." *Id.* Dissenting, Justice Dickson would have rejected the conditional agreement, opining that Respondent had made a request and not a demand, the request was not a precondition, the grievance could not have been withdrawn, and Respondent had unconditionally made his clients whole. *Id.* at 122. In Justice Dickson's view, the attorney's actions in response to his clients' dissatisfaction with his representation were "very commendable and should not be discouraged," and his request was not prejudicial to the administration of justice. *Id.*

As in *Ramirez*, here Respondent's demand was not actually prejudicial to the outcome of the underlying litigation; his ex-girlfriend did not act upon the demand, and she ultimately obtained a dismissal of some counts and summary judgment on the remaining counts. Respondent's demand also did not change the trajectory of the Commission's investigation

insofar as the initial grievances were concerned;[3] those grievances were not withdrawn by the grievants (nor could they have been), and hindsight informs us those grievances' lack of merit destined them for eventual dismissal by the Commission.[4]

But prejudice under Rule 8.4(d) is measured in relation to the "administration of justice" and not any particular outcome for the parties. There can be little question that disciplinary investigations are encompassed within the administration of justice, both in terms of protecting the public from attorneys who commit misconduct and protecting attorneys from unwarranted claims of misconduct made against them. *See* Admis. Disc. R. 23(1)(c). Accepting as true that the grievances against Respondent were meritless simply begs the question the Commission was charged with answering. *See* Admis. Disc. Rs. 23(10), (11). At the time Respondent made his demand, the Commission had objectively good cause for its investigation, as Respondent was facing criminal charges and was the subject of a temporary protective order in connection with his alleged conduct toward his ex-girlfriend. That much of this eventually was resolved in Respondent's favor does nothing to alter the need for the Commission to investigate the allegations made in the grievances, and for that process to occur free from any attempts to undermine it.

Respondent's frustration at having to deal with meritless disciplinary grievances certainly is understandable. He is not alone in that regard. The vast majority of grievances filed against attorneys are dismissed by the Commission for want of reasonable cause to believe misconduct has occurred. *See id.*; *see also Indiana Supreme Court Annual Report 2018-2019* at 47 (showing 1,414 grievances were filed in the fiscal year, and during the

[3] Of course, Respondent's demand prompted a new line of investigation that gave rise to the instant proceedings.

[4] The Commission claimed in a pretrial pleading that the grievances were not "dismissed," but rather, "the internal case management system number the Commission assigned to the grievances was 'closed[.]'" (Comm'n Mot. to Correct "Entry Regarding Final Hearing" at 4). The Commission wisely has not reprised this semantic distinction in its briefs to this Court.

same period 1,149 grievances were dismissed either summarily or following investigation). For this reason, the investigatory process is largely confidential. *See* Admis. Disc. R. 23(22)(a). It also is understandable under the circumstances that Respondent might wish to have other pending matters against him be resolved before entering into any settlement in his defamation case. But there is a right way and a wrong way to go about addressing these matters, and our precedents make clear that any attempt—however mild or unsuccessful—to interfere with the investigatory process required by Rule 23 or use the disciplinary process to leverage more favorable settlement terms is forbidden.[5]

For these reasons, we find and conclude that Respondent violated Rule 8.4(d) as charged.[6] We turn now to the question of sanction.

The Commission properly acknowledges that under the particular circumstances of this case "[t]he nature of [R]espondent's misconduct was not serious" and "[t]he potential for harm . . . was minimal." (Br. on Sanction at 2, 4). Similar violations of Rule 8.4(d) have resulted in public reprimands. *Matter of Love*, 19 N.E.3d 251, 252 (Ind. 2014); *Matter of Dimick*, 969 N.E.2d 17, 18 (Ind. 2012); *Ramirez*, 853 N.E.2d at 121; *Matter of Blackwelder*, 615 N.E.2d 106, 108 (Ind. 1993). One can also imagine, provided certain conditions were met, that the Commission in such a case might even exercise its discretion to forgo prosecution of a disciplinary

[5] Nothing in our opinion today should be construed as prohibiting notice to the Commission that an underlying dispute has been resolved. Mere notice of settlement, as opposed to a demand or request that a grievance be withdrawn, does not risk compromising a disciplinary investigation and does not create any expectancy of doing so.

[6] Apart from the meritlessness of the grievances, Respondent additionally argues that his conduct was not prejudicial to the administration of justice because the grievants were not former clients but an opposing party and her sister. However, we share the view of the Ohio Supreme Court that this is a distinction without a difference for purposes of a Rule 8.4(d) analysis. *Chambers*, 125 Ohio St.3d at 417; *Disciplinary Counsel v. Bruce*, 158 Ohio St.3d 382, 385, 143 N.E.3d 501, 504 (2020). Respondent similarly contends that there was insufficient nexus between the grievances he demanded be withdrawn as a condition of settlement and his professional obligations as an attorney, but he is mistaken. *See Matter of Usher*, 987 N.E.2d 1080, 1087 (Ind. 2013) ("[T]he Indiana Rules of Professional Conduct apply to an attorney who is a party to litigation"); *see also Matter of Keaton*, 29 N.E.3d 103 (Ind. 2015) (disciplining an attorney for a pattern of stalking and harassment committed against an ex-girlfriend).

complaint. *See, e.g.,* Admis. Disc. Rs. 23(10)(a)(2) (permitting the Commission's Executive Director to issue a caution letter to an attorney and, if the attorney complies with the terms of the letter, take no further action on the grievance); 23(12.1)(a) (allowing the Commission and the respondent attorney to resolve a disciplinary matter by private administrative admonition if, among other things, the misconduct is not likely to result in "material prejudice" and "would not likely result in discipline greater than a public reprimand if successfully prosecuted").

Were this the end of the story, we likely would issue a public reprimand here as well. Respondent has no prior discipline, his improper demand to opposing counsel was a minor violation, and no other acts of misconduct have been charged in this matter.[7] But in assigning a sanction, we consider aggravating and mitigating factors as well. *See, e.g., Matter of Bernacchi*, 83 N.E.3d 700, 703 (Ind. 2017). Here, we simply cannot turn a blind eye to Respondent's abusive conduct during these proceedings against the Commission's staff, the hearing officer, the judge in his defamation case, and even members of this Court. *Accord id.* at 703-04 (considering the respondent's conduct during the disciplinary proceedings when deciding on sanction). While we will not repeat here the full range of epithets and *ad hominem* attacks Respondent has directed toward others, he repeatedly attacked the Commission for incompetence and corruption, including calling the Commission's Executive Director a "buffoon" and "playground weakling" and the Commission's staff attorney an "errand boy." (Comm'n Exs. 9, 10, 11, 13, 20, 27, 33, 35, 36, 41). Respondent has also accused the judge in his defamation case of having "betrayed and shamed his oath and his office," he has accused the hearing officer of being a "puppet," and he has repeatedly accused members of this Court of having improperly attempted to influence the hearing officer in this matter. (Comm'n Exs. 30, 33, 36, 38, 41; Pet. for Rev. at 10, 17).

Let us be clear: attorneys have every right to defend themselves in disciplinary investigations and proceedings using every bit of persuasive

[7] Respondent does have an unrelated disciplinary case pending against him, but we give that no consideration here.

power that facts, law, reason, and rhetoric can offer. But they do not have a right to merely hurl senseless invective and baseless allegations toward opposing counsel, judicial officers, and everyone else with a connection to the matter. Such vituperative and unfounded conduct unnecessarily undermines the legitimacy of proceedings and "has no place within the contemporary practice of law." *Matter of Crumpacker*, 269 Ind. 630, 663, 383 N.E.2d 36, 52 (1978). It also is not effective advocacy, whether on behalf of a client or oneself. Respondent has advanced colorable arguments on occasion during these proceedings, but it has not helped his cause that we have had to wade through reams of vitriol to find them.

In sum, Respondent's violation, coupled with his conduct during these proceedings, persuades us that a short suspension is warranted in this case. Although we do not adopt the Commission's request that Respondent be required to undergo the reinstatement process at the conclusion of his suspension, the Commission's observations about Respondent's intemperate behavior are well-taken, and we strongly caution Respondent to conduct himself more appropriately going forward. A failure to do so likely will cause any future findings of misconduct to be met with stiffer sanction. *See Matter of Wray*, 91 N.E.3d 578, 584-85 (Ind. 2018); *Matter of Powell*, 76 N.E.3d 130, 135 (Ind. 2017).

# Conclusion

The Court concludes that Respondent violated Professional Conduct Rule 8.4(d) as charged. For Respondent's professional misconduct, the Court suspends Respondent from the practice of law in this state for a period of 30 days, beginning September 17, 2021. Respondent shall not undertake any new legal matters between service of this opinion and the effective date of the suspension, and Respondent shall fulfill all the duties of a suspended attorney under Admission and Discipline Rule 23(26). At the conclusion of the period of suspension, provided there are no other suspensions then in effect, Respondent shall be automatically reinstated to the practice of law, subject to the conditions of Admission and Discipline Rule 23(18)(a). The costs of this proceeding are assessed against

Respondent, and the hearing officer appointed in this case is discharged with the Court's appreciation.

Rush, C.J., and David, Massa, Slaughter, and Goff, JJ., concur.

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