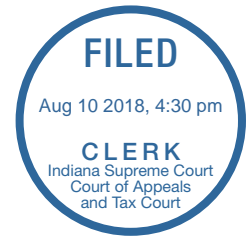


In the Indiana Supreme Court

In the Matter of: Kelly J. Smith,
Respondent

Supreme Court Case No.
18S-DI-5



Published Order Approving Statement of Circumstances and Conditional Agreement for Discipline

Pursuant to Indiana Admission and Discipline Rule 23(12.1)(b), the Indiana Supreme Court Disciplinary Commission and Respondent have submitted for approval a “Statement of Circumstances and Conditional Agreement for Discipline” stipulating agreed facts and proposed discipline as summarized below.

Stipulated Facts: In August 2017, pursuant to a guilty plea, Respondent was convicted in Johnson County of felony and misdemeanor counts of operating a vehicle while intoxicated (“OWI”). Respondent has a prior conviction for OWI in Marion County and was on probation at the time of her arrest in Johnson County.

As a result of her probation violation, Respondent received among other things a sentence of 45 days’ house arrest and was required to submit to daily alcohol monitoring. As a result of her second conviction, Respondent received a 730-day sentence, the bulk of which was suspended to probation.

Respondent has no prior discipline and has been cooperative with the disciplinary process. Respondent voluntarily sought out treatment and therapy following her first arrest in September 2016 and has been fully compliant with all medical recommendations. Unbeknownst to Respondent, her initial diagnosis was not fully accurate, which rendered her treatment plan less effective. Respondent obtained a more accurate diagnosis following her second arrest, and her current treatment plan has proven very successful.

Violation: The parties agree that Respondent violated Indiana Professional Conduct Rule 8.4(b), which prohibits committing a criminal act that reflects adversely on Respondent’s trustworthiness or fitness as a lawyer.

Discipline: The parties propose the appropriate discipline is a suspension of 90 days, all stayed subject to completion of at least one year of probation with JLAP monitoring. The Court, having considered the submission of the parties and the unique circumstances of this case, now approves the agreed discipline.

For Respondent’s professional misconduct, the Court **suspends Respondent from the practice of law for a period of 90 days, beginning on the date of this order, all stayed subject to completion of at least one year of probation under a JLAP monitoring agreement.** The

Court incorporates by reference the terms and conditions of probation set forth in the parties' Conditional Agreement, which include among other things:

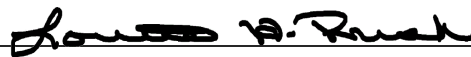
- (1) Respondent shall maintain complete sobriety for the duration of her probation.
- (2) Respondent shall commit no violations of the Rules of Professional Conduct or commit any criminal act during her probation.
- (3) Respondent shall comply with her existing course of treatment and with her criminal probation in Johnson County.
- (4) At the conclusion of her probationary period, Respondent shall submit an affidavit of compliance to this Court.
- (5) If Respondent violates the terms of her probation, the stay of her suspension shall be vacated and the balance of the stayed suspension shall be actively served without automatic reinstatement.

Notwithstanding the expiration of the minimum term of probation set forth above, Respondent's probation shall remain in effect until it is terminated pursuant to a petition to terminate probation filed under Admission and Discipline Rule 23(16).

The costs of this proceeding are assessed against Respondent. With the acceptance of this agreement, the hearing officer appointed in this case is discharged.

Done at Indianapolis, Indiana, on 8/10/2018.

FOR THE COURT



Loretta H. Rush

Chief Justice of Indiana

All Justices concur, except Rush, C.J., who would reject the conditional agreement, believing that a period of active suspension and a longer term of probation are warranted given the endangerment involved in both criminal cases.