

In the Indiana Supreme Court

In the Matter of: Mark Small,
Respondent

Supreme Court Case No.
19S-DI-647



Published Order Finding Misconduct and Imposing Discipline

Upon review of the report of the hearing officer, the Honorable Helen Marchal, who was appointed by this Court to hear evidence on the Indiana Supreme Court Disciplinary Commission's "Verified Disciplinary Complaint," the Court finds that Respondent engaged in professional misconduct and imposes discipline on Respondent.

Facts: Respondent engaged in a pattern of neglect in numerous appeals involving criminal matters and termination of parental rights. At least six appeals were dismissed due to Respondent's neglect. In most other appeals successor counsel was appointed or the Court of Appeals took other action to protect the clients' appeals.

Facts in aggravation include Respondent's prior discipline and his pattern of misconduct here. Facts in mitigation include Respondent's cooperation, remorse, and engagement with the Judges and Lawyers Assistance Program (JLAP) to address factors contributing to his misconduct.

Violations: Respondent has admitted, the hearing officer found, and the Court likewise finds that Respondent violated these Indiana Professional Conduct Rules prohibiting the following misconduct:

- 1.3: Failing to act with reasonable diligence and promptness.
- 1.16(a): Failing to withdraw from representation when the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.
- 8.4(d): Engaging in conduct prejudicial to the administration of justice.

Discipline: For Respondent's professional misconduct, the Court **suspends Respondent from the practice of law for a period of one year, beginning on the date of this order, all stayed subject to completion of at least three years of probation** on the following terms and conditions:

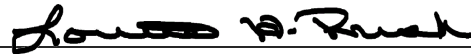
- (1) Respondent shall remain under a long-term JLAP monitoring agreement for the duration of his probation, shall continue with mental health and supportive programming through JLAP, and shall follow all recommendations from medical professionals with respect to medication and/or mental health treatment.
- (2) Respondent shall have no violations of the Rules of Professional Conduct or any other law during his probation.

- (3) Respondent shall promptly report to the Commission any violation of the terms of Respondent's probation.
- (4) If Respondent violates the terms of his probation, the stay of his 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. The hearing officer appointed in this case is discharged with the Court's appreciation.

Done at Indianapolis, Indiana, on 5/20/2021.



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.